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IN THE

Supreme Court of the United States

October Term, 1979

No. .....

~~79~~-923

ALAN L. STEIN, AS SECRETARY OF THE BUSINESS AND TRANSPORTATION AGENCY OF THE STATE OF CALIFORNIA,

Appellant,

vs.

CONFERENCE OF FEDERAL SAVINGS AND LOAN ASSOCIATIONS, a California corporation, etc., and FEDERAL HOME LOAN BANK BOARD,

Appellees.

On Appeal From the United States Court of Appeals for the Ninth Circuit

JURISDICTIONAL STATEMENT

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IN THE

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No. .....

ALAN L. STEIN, AS SECRETARY OF THE BUSINESS AND TRANSPORTATION AGENCY OF THE STATE OF CALIFORNIA,
Appellant,

vs.

CONFERENCE OF FEDERAL SAVINGS AND LOAN ASSOCIATIONS, a California corporation, etc., and FEDERAL HOME LOAN BANK BOARD,
Appellees.

On Appeal From the United States Court of Appeals for the Ninth Circuit

JURISDICTIONAL STATEMENT

Alan L. Stein, as Secretary of the Business and Transportation Agency of the State of California, appeals from the final judgment of the United States Court of Appeals for the Ninth Circuit holding that the California Housing Financial Discrimination Act of 1977, CAL. HEALTH & SAFETY CODE §§ 35800-35854 (West Supp. 1979), insofar as it applies to

federally-chartered savings and loan associations, is unconstitutional in that it violates Article VI, cl. 2 of the United States Constitution.[1]

I
OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit rendered on September 26, 1979 appears in the Appendix hereto at page 1 thereof (also at 604 F.2d 1256 (9th Cir. 1979)).

The "Statement of Intended Decision" and Findings of Fact and Conclusions of Law rendered by the United States District Court for the Eastern District of California are included in the Appendix hereto, commencing at pages 11 and 16 thereof.

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[1]The action was commenced by the following plaintiffs: Conference of Federal Savings and Loan Associations, Alameda Federal Savings and Loan Association, Bay View Federal Savings and Loan Association, California Federal Savings and Loan Association, Coast Federal Savings and Loan Association, Eureka Federal Savings and Loan Association, First Federal Savings and Loan Association of San Diego, First Federal Savings and Loan Association of Santa Monica, First Federal Savings and Loan Association of South Pasadena, Home Federal Savings and Loan Association of San Diego, Orange Belt Federal Savings and Loan Association, Pacific Federal Savings and Loan Association, Peoples Federal Savings and Loan Association, Pomona First Federal Savings and Loan Association, Provident Federal Savings and Loan Association of Riverside, Redlands Federal Savings and Loan Association, Republic Federal Savings and Loan Association, San Francisco Federal Savings and Loan Association, Santa Fe Federal Savings and Loan Association, The Heart Federal Savings and Loan Association and Western Federal Savings and Loan Association. The defendants were Richard T. Silberman, the predecessor in office to Alan L. Stein, and the Federal Home Loan Bank Board. The Federal Home Loan Bank Board cross-claimed against the California Secretary of Business and Transportation.

II
JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit holding a California statute unconstitutional in part was entered on September 23, 1979. This appeal is being docketed in this Court within 90 days from the entry of judgment. A notice of appeal was filed with the United States Court of Appeals for the Ninth Circuit on November 19, 1979. Appendix at page 80.

The Court has jurisdiction over this appeal under 28 U.S.C. § 1254(2). *See Minnesota v. Northern States Power Co.*, 405 U.S. 1035 (1972), *aff'g.*, 447 F.2d 1143 (8th Cir. 1971); R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE, 64-65 (5th ed. 1978).

III
QUESTION PRESENTED

Whether the California Housing Financial Discrimination Act of 1977, CAL. HEALTH & SAFETY CODE §§ 35800-35854 (West Supp. 1979), insofar as it applies to federally-chartered savings and loan associations, is preempted by federal law by virtue of the Home Owners' Loan Act of 1933, 12 U.S.C. §§ 1461-1470, notwithstanding provisions in Title VIII of the 1968 Civil Rights Act, 42 U.S.C. §§ 3610, 3615, and the Equal Credit Opportunity Act, 15 U.S.C. § 1691d, which expressly grant the states the power to regulate in the area of credit and antidiscrimination.

IV

CONSTITUTIONAL PROVISIONS AND STATUTES

The texts of the following laws are set forth in the Appendix:

United States Constitution, Article VI, clause 2 (Appendix at page 24);

CAL. HEALTH & SAFETY CODE, §§ *35800-35854 (West Supp. 1979) (California Housing Financial Discrimination Act of 1977 or "California Act")* (Appendix at page 25);

42 U.S.C. §§ 3610, 3615 (fair housing provisions of the Civil Rights Act of 1968 or "Title VIII") (Appendix at page 34);

15 U.S.C. § 1691d(e)-(g) (Equal Credit Opportunity Act or "ECOA") (Appendix at page 38);

12 U.S.C. §§ 1461-1470 (Home Owners' Loan Act of 1933 or "HOLA") (Appendix at page 40).

V

STATEMENT OF THE CASE

Effective January 1, 1977, the California Legislature enacted the Housing Financial Discrimination Act of 1977. CAL. HEALTH & SAFETY CODE § 35800-35854 (West Supp. 1979). The Legislature had found that certain financial institutions doing business in the state had sometimes denied financial assistance in certain areas or approved assistance on terms less favorable than usually offered in other geographic areas and that this practice had the effect of, *inter alia,* reducing the availability of family housing, impairing the value of property and perpetuating racially and economically segregated areas. *Id.* § 35801. Thus, the purposes of the California Act included: (1) preventing discrimination in the provision of financial assistance for financing or refinancing the purchase, construction, rehabilitation, or improvement of housing accommodations because of conditions, characteristics, or trends in a neighborhood or geographic area; (2) encouraging increased lending in neighborhoods in which conventional residential mortgage financing had previously been unavailable; (3) increasing the availability of housing accommodations to creditworthy persons; (4) providing decent, safe housing; and (5) preventing the abandonment and decay of neighborhoods in certain geographic areas. *Id.* § 35802.

The Legislature, in enacting the California Act, specifically prohibited discrimination in lending based on a consideration of the conditions, characteristics or trends in a neighborhood or geographic area surrounding the housing accommodation which was to be the security for the loan (such discrimination is commonly known as "redlining") and discrimination based on a consideration of race, color, religion, sex, marital status, national origin or ancestry. *See id.* §§ 35810-35812.

The California Act provides the Secretary with the authority to enforce the provisions of the Act. *Id.* §§ 35814-35823. In furtherance of this enforcement authority, California Health & Safety Code section 35830 specifies that applicants for financial assistance must be provided with a notice outlining the prohibitions against discrimination set forth in the Act and the right to seek review by the Secretary of the Business and Transportation Agency following the denial of any loan. The statute also requires that this

notice be posted in a conspicuous place for public inspection in the offices of the financial institutions.[2]

On February 6, 1978, plaintiffs-appellees, the Conference of Federal Savings & Loan Associations and certain individual associations (hereinafter collectively referred to as "Conference" or "plaintiffs"), filed this action against defendant-appellant Richard T. Silberman, the Secretary of the Business and Transportation Agency of the State of California (the present Secretary is Alan L. Stein) (hereinafter referred to as "California" or the "Secretary"), and defendant, the Federal Home Loan Bank Board (hereinafter sometimes referred to as "Board"). Clerk's Record on Appeal ("CR") 1-73.

Plaintiffs in their complaint sought a declaration that the California Act had been preempted by the provisions of HOLA. The Board answered the complaint by admitting the averments of the complaint, CR 76-77, and filed a cross-claim against the Secretary. The Board in its cross-claim asked for relief similar to that sought by the Conference. CR 77-83.

On March 7, 1978, the Conference filed a motion for partial summary judgment on behalf of plaintiffs with respect to their claim that the California Act

[2]The Court of Appeals' decision distinguishes between "procedural" and "substantive" nondiscrimination provisions in the California Act and holds the "procedural" provisions preempted, but does not reach the issue of whether "substantive" rights of borrowers under the California Act are preempted. Such a distinction is inexplicable. The only right to judicial relief the Act expressly provides to borrowers is the right to obtain review of agency action upon complaints. CAL. HEALTH & SAFETY CODE § 35823. Under the California Act borrowers have a right to have the state agency take action to prevent or remedy discrimination. Without the required notice and complaint procedures, potential borrowers would likely never be aware that they are victims of discrimination.

is preempted by federal law, CR 89-127, and a motion for entry of final judgment on that claim pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. CR 128-35. The Board then filed an amended cross-claim against the Secretary, adding a claim for injunctive relief to prevent the Secretary from enforcing the California Act against federal associations doing business in the State of California. CR 164-73. On March 13, 1978, the Secretary filed a motion to dismiss or in the alternative stay the action, CR 183-219, and a motion to strike. CR 174-82.

On March 20, 1978, the Board applied for a temporary restraining order, CR 348-54, and moved for a preliminary injunction to prohibit the Secretary from enforcing the Act as to federally-chartered savings and loan associations. CR 223-347. After a hearing, the court denied the temporary restraining order and set all of the pending motions for hearing on May 1, 1978. Reporter's Transcript.[3]

Neither plaintiff nor the Board presented any factual information concerning the application or effects of the federal or state laws in question. They simply referred to federal statutes and legal opinions rendered by the Board. CR 100-26. They did not point to any legislation precluding the state from attempting to prevent discrimination or "redlining" in connection with loans secured by California real property. There was no showing that the California Act would interfere

[3]Claims of plaintiffs and the Board that the associations might be subjected to financial penalties if they were in violation of state law were removed from the case when the Secretary and the Attorney General agreed not to claim any such penalties for alleged violations of the California Act that occurred prior to a final determination of whether the federal associations were required to comply with the California Act. CR 648-49.

with or frustrate or inhibit the operation of federal law.

The Secretary, on the other hand, submitted uncontradicted evidence showing that there was no conflict between state and federal law. This evidence demonstrated that existing California law did not purport to exempt federal savings and loans from complying with federal law; that nothing in state law inhibited federal associations from complying with federal law; that nothing in the California Act would compel federal savings and loans to make loans or issue reports or post notices in violation of federal law; that compliance with the California Act would not make compliance with federal law more difficult or expensive; and that there would be no harmful impact on federal savings and loan associations should they be required to comply with state law. CR 619-23.

In addition, uncontradicted evidence showed that the federally-chartered savings and loan associations utilize notes and deeds of trust which are executed in California and subject to California law. CR 802-05. These savings and loan associations do their lending business in California and deal with California real estate. CR 937. In fact, a prospectus filed with the Securities Exchange Commission by a member of the Conference specifically points out that the basic terms of the mortgages are dictated by California law. CR 952-62.

At the time of the commencement of the action there were Board regulations preventing federal associations from engaging in discrimination. These regulations did not deal specifically with redlining. 12 C.F.R. §§ 528.1-528.8 (1976). Neither these regulations nor

proposed Board regulations were the basis of the trial court's decision. CR 1097-101. There was no showing that the Board's proposed regulations, 43 Fed. Reg. 22332-22339 (1977), would conflict with state law.

The proposed Board regulations went into effect in May of 1978. 12 C.F.R. §§ 528.1-528.8 (1979). These regulations preclude discrimination in lending and deal with redlining. They also provide for posting of an "Equal Housing Lender Poster" and monitoring lending activity.[4]

On May 9, 1978, the trial court issued a "Statement of Intended Decision." CR 1097-101. On August 16, 1978, the court issued: (1) an order denying the Secretary's motion to dismiss or in the alternative to stay the action and motion to strike, CR 1120-23; (2) an order granting partial summary judgment in favor of plaintiffs[5] and denying preliminary injunctive relief without prejudice, CR 1124-29; and (3) findings of fact and conclusions of law, CR 1130-38. On August 18, 1978, the clerk of the court entered judgment against the Secretary. CR 1139.

The trial judge held that as a matter of law, the California Act could not be applied to federally-

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[4]Although these regulations were before the Court of Appeals, that court did not find it necessary to rely on them. Instead the court based its decision on HOLA. Nevertheless, it is clear that the regulations do not conflict with or purport to preempt state law. Interestingly, Board antidiscrimination regulations even suggest the applicability of state law, 12 C.F.R. § 529.8(3) ("any applicable proceeding under state or local law"). To the extent the Board issued a statement, resolution or opinion relating to preemption, such action does not have the effect of substantive law. *See* Chrysler Corp. v. Brown. ..... U.S. ....., 99 S.Ct. 1705, 1717-25.

[5]Plaintiffs asserted another claim relating to the validity of California's laws concerning other savings and loan practices. Neither the opinions below nor this appeal concern that claim.

chartered savings and loan institutions by virtue of the preemption doctrine because language contained in certain federal statutes granting the states powers "in no way limits the Federal Home Loan Bank Board's plenary regulatory power under the Home Owners' Loan Act of 1933, 12 U.S.C. §§ 1461, *et seq.*" The judge provided that final judgment would be entered so "that the parties may seek an immediate appeal of this ruling" and stated that, although the Board's motion for a preliminary injunction could be granted, it was unnecessary to do so. The judge added that if "circumstances should arise where such an injunction might be necessary in aid of this Court's jurisdiction or to protect and effectuate its judgment . . . the Court would entertain a renewal of the motion." CR 1097-101.[6] Thus, by the court's ruling, California was precluded from enforcing the California Act as to federally-chartered savings and loan associations.

On September 12, 1978, California filed its Notice of Appeal. CR 1140. In view of the fact that California was unable to enforce its laws as to federally-chartered savings and loan associations which do business in California and compete with other California financial institutions, California sought an expedited hearing of its appeal. The Court of Appeal, after the briefs were filed, granted an expedited appeal.[7]

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[6]Summary judgment was granted despite Supreme Court decisions suggesting the need for some factual findings in preemption cases. *See* Jones v. Rath Packing Co., 430 U.S. 519, 526 (1977) (court must "consider the relationship between federal laws as they are interpreted and *applied*, not merely as they are written" (emphasis added)); De Canas v. Bica, 424 U.S. 351, 363-65 (1976); New York State Department of Social Services v. Dublino, 413 U.S. 405, 423 (1973).

[7]The Court of Appeals also granted an application of the NAACP Legal Defense and Educational Fund, Inc., to file an *amicus curiae* brief on behalf of California's position. *Amicus* contended that antiredlining regulations of the Federal Home Loan Bank Board are grounded in federal civil rights statutes which specifically allow state regulation in the area; that the intent of Congress under federal antidiscrimination laws was not to preempt state efforts; and that strong policy considerations dictate that federal savings and loan associations be subject to the same antidiscrimination laws as other lending institutions in California.

On September 26, 1979, the United States Court of Appeals for the Ninth Circuit affirmed the district court's judgment (Senior Ninth Circuit Judge Merrill, Ninth Circuit Judge Hug and Senior United States District Judge Port of the Northern District of New York). The Court of Appeals held that by virtue of HOLA, the California Act was unconstitutional insofar as it applied to federally-chartered savings and loan associations, regardless of the provisions of federal civil rights legislation.

VI
THE QUESTION IS SUBSTANTIAL

A. Introduction

The California Act, which is contained in the Health & Safety Code (and not in the Financial Code, which deals with the regulation of state financial institutions), does not purport to regulate federally-chartered institutions. Rather, it does what federal legislation encourages—it protects California citizens against discriminatory lending practices by all financial institutions doing business in California. There is no showing that the federal associations are subjected to conflicting regulation. Indeed, a federally-chartered institution generally only does business in its home state. *See* 12 C.F.R. § 545.6-6 (1979).

There are many state laws dealing with such health and safety matters as wages and working conditions, child labor and discrimination, which are applicable to federally-chartered institutions.[8] The California Act does not "regulate" federal institutions any more than do these laws.

Although the Federal Home Loan Bank Board has recently enacted regulations directed at redlining, the state should not be dependent upon changing policies and enforcement practices of a federal agency. Rather, states should be able to take steps to prevent discrimination, so long as those steps do not conflict with federal law.[9]

If the opinion of the Ninth Circuit Court of Appeals is left standing, (i) the applicability of all state health and welfare laws to federal associations doing business in the states will be in question, (ii) state efforts, encouraged by federal legislation, to prevent discrimination in lending and redlining will be inhibited, (iii) a

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[8]*See* CAL. LAB. CODE §§ 148-149 (West Supp. 1979 (California Occupational Safety Health Board); CAL. LAB. CODE §§ 200-240 (West 1971 & Supp. 1979) (payment of wages); CAL. LAB. CODE §§ 500-556 (West 1971) (working hours); CAL. LAB. CODE §§ 1171-1204 (West 1971 & Supp. 1979) (wages, hours and working conditions); CAL. LAB. CODE § 1183 (West Supp. 1970) (employers required to post wage orders); CAL. LAB. CODE §§ 1285-1311 (West 1971 & Supp. 1979) (minors); CAL. LAB. CODE §§ 1410-1433 (West 1971 & Supp. 1979) (fair employment practices); CAL. LAB. CODE §§ 2800-2805 (West 1971 & Supp. 1979) (obligation of employer); CAL. LAB. CODE §§ 3201-5317 (West 1971 & Supp. 1979) (workers' compensation), all of which apply to all employers and institutions in California, including those that are federally-chartered.

[9]The federal regulations resulted only after efforts and litigation by civil rights organizations, such as the NAACP Legal Defense and Educational Fund, Inc. *See Amicus* Brief of NAACP Legal Defense and Educational Fund, Inc. on behalf of California filed in the Court of Appeals in this case.

state will be totally dependent on the Board to prevent redlining and discrimination by certain institutions doing business in that state, (iv) federal associations, which utilize state lending laws for their benefit and do business in the states, will be immune from state laws designed to protect citizens from discrimination, and (v) preemption will have been implied despite federal civil rights legislation strongly suggesting nonpreemption.

Courts have referred to the broad reach of federal statutes regulating various federally-chartered institutions. *See, e.g., Cook County National Bank v. United States,* 107 U.S. 445, 448 (1883); *Commercial State Bank of Roseville v. Gidney,* 174 F.Supp. 770, 774 (D.D.C. 1959), *aff'd,* 278 F.2d 871 (D.C. Cir. 1960) (National Bank Act, 12 U.S.C. §§ 21-213); *United States v. Alabama,* 434 F.Supp. 64 (M.D. Ala. 1977) (Federal Credit Union Act, 12 U.S.C. §§ 1751-1795i). Yet, these acts have been held not to preclude the application of state law to federally-chartered institutions. *See, e.g., Anderson National Bank v. Luckett,* 321 U.S. 233, 241 (1944); *United States v. Alabama, supra.* In connection with its effect on state law, HOLA should not be treated differently than these analogous statutes. Since this Court has not dealt with the effect of HOLA upon state law, guidance and clarification from the Court on this issue should be welcome to state and federal agencies as well as to the financial community.

B. The Preemption Doctrine Should Not Be Applied in This Case

State legislation may be preempted by federal legislation only where Congress either *intended* preemption, or where there is a *conflict* between federal law and state law. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157-59 (1978). This Court has repeatedly advised that preemption is "not lightly to be presumed." *Schwartz v. Texas*, 344 U.S. 199, 202-03 (1952), *cited with approval in New York State Department of Social Services v. Dublino*, 413 U.S. 405, 413 (1973). *Accord, Exxon v. Governor of Maryland*, 437 U.S. 117, 132 (1978) (the "Court is generally reluctant to infer preemption."). *See generally* Note, *The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court*, 75 COLUM. L. REV. 623, 649 (1975) ("Cumulatively considered, the Burger Court decisions show a renewed emphasis on the state directed doctrine.").

There are sound policy reasons for such narrow application. If no preemption is found, Congress can always change the result by legislation; erroneous preemption, however, leaves the states impotent to correct the situation. *See Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 643 (1973) (Rehnquist, J., dissenting).

C. Congress Specifically Authorized the States to Regulate the Subjects of Discrimination and Redlining

There is not one word in HOLA providing for express preemption or dealing with the subject of discrimination in lending. Whatever authority the Board has in the area of antidiscrimination emanates principally from various federal statutes, including ECOA and

Title VIII. In its regulations, the Board itself lists several statutes as its source of authority, including Title VIII and ECOA.[10] The Board itself has, in effect, argued before at least one other court that its antidiscrimination regulations came from the Civil Rights Act of 1968. *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489, 494 (S.D. Okla. 1976).[11] In its regulations the Board provides that member institutions may not rely upon an appraisal which "the institution knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect *under the Fair Housing Act of 1968* [Title VIII] *or the Equal Credit Opportunity Act*." 12 C.F.R. § 528.2a (a)(1979) (emphasis added). It follows that in determining whether Congress intended that there be preemption in the area of antidiscrimination, one must resort to these authorizing statutes.[12]

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[10]In its proposed regulations, the Board stated that it was implementing ECOA and Title VIII. *See* proposed regulations appearing in 42 Fed. Reg. 58182-86, 58953-56 (1977); 43 Fed. Reg. 22332-33 (1977). As noted *supra*, these regulations have been adopted. *See* 12 C.F.R. §§ 528.1-528.8 (1979).

No federal statute expressly prohibits "redlining." The Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801-2809, however, provides for *disclosure* of information which might demonstrate the existence of redlining, but such disclosure requirements are in effect only for a limited period of time.

[11]The Board asserted this position in an *amicus* brief in *Laufman*.

[12]This was the approach taken by a federal court in New Jersey which held that while states could not regulate national banks in the area of disclosure, the state's anti-discrimination and anti-redlining laws could be applied to national banks. National State Bank v. Long, 469 F. Supp. 1068 (D.N.J. 1979). In that case, the court did not resort to the National Bank Act, 12 U.S.C. § 21-215b; rather, it analyzed the

(This footnote is continued on next page)

1. ECOA

The Equal Credit Opportunity Act expressly provides that persons aggrieved by discrimination in lending may elect to seek relief either under the federal laws or *under applicable state law*. 15 U.S.C. § 1691d(e). Thus, Congress has explicitly stated that federal law does not preempt the field of antidiscrimination in lending. Moreover, federal associations cannot even argue the existence of federal preemption without first pressing their claims before the Board of Governors of the Federal Reserve System, which "is authorized to determine whether such inconsistencies exist." 15 U.S.C. § 1691d(f) ("The Board may not determine that any state law is inconsistent with any provision of the subchapter if the Board determines that such law gives greater protection to the applicant."). The record in this case discloses no claim before the Federal Reserve Board of Governors.[13]

That ECOA was designed to permit the states to legislate to proscribe redlining is not only clear from the statute itself, *see* 15 U.S.C. § 1691d(e)-(g) (1976), but also from its legislative history. Clearly "redlining" was within the intended ambit of ECOA. During House debate on the 1976 ECOA Amendments, Representative Wylie, the ranking minority member of the House Subcommittee on Consumer Affairs (which proposed the amendments), stated:

Home Mortgage Disclosure Act of 1975, 12 U.S.C. §§ 2801-2809, the Community Reinvestment Act of 1977, 12 U.S.C. §§ 2901-2905 and, more importantly, ECOA, *Cf.* Perpetual Federal Savings & Loan Ass'n., 90 F.T.C. 648, 661 (1977) (HOLA did not immunize federal associations from FTC rules relating to interlocking directorates or from antitrust laws).

[13]Federal savings and loan associations are "persons" subject to the provisions of ECOA. *See* 15 U.S.C. §1691a.

> "Although this bill does not specifically prohibit the practice of redlining, . . . [it] would indirectly prohibit such practice in that each individual applicant for credit must be considered on his own merits as to credit worthiness.
>
> The Honorable Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights, made note of this practice of redlining when he appeared at the hearings with supporting testimony that the practice is widespread. He said he supported this bill, because he felt this approach would, indeed, provide a neutral standard of credit worthiness, which would not include class discrimination and would, in fact, prohibit the practice of so-called red-lining." 121 CONG. REC. 16742-43 (1975) (remarks of Rep. Wylie).

See Pub. L. No. 94-239, § 5, 90 Stat. 253 (1976).

The House Conference Report shows that no preemption was intended by providing as follows:

> "Both the House bill and the Senate amendment contained provisions restricting an aggrieved applicant to a single recovery when a creditor's contract violates both state and federal law. With some technical changes, the Conference Report contains the Senate provision, which makes it clear that an applicant can bring only one lawsuit for monetary damages, but is not otherwise restricted in his or her remedies under state law and under this Act.
>
> The Conference Report also contains two provisions, patterned on similar sections of the Fair Credit Billing Act [15 U.S.C. § 1666j(a)-(b)] which make it clear that this Act does not preempt state law unless that law is inconsistent with the

> federal Act. Similarly, the Board [of Governors of the Federal Reserve System] is directed to exempt from the federal Act any classes of transactions which are subject to state law substantially similar or more protective than this Act. The provision also confirms that the permitted exemptions are from the 'requirements' of this Act and not from its remedial provisions." H.R. REP. NO. 94-873, 94th Cong., 2d Sess. 9 (1976), *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 427, 429.

See also S. REP. NO. 94-589, 94th Cong., 2d Sess. 17 (1976), *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS, 403, 418-19.

This legislative history demonstrates that Congress intended only to establish minimum standards, not to preempt stricter regulation by the states. This fact is also demonstrated by the exemption from the provisions of federal law to be granted to classes of credit transactions within any state where state regulation is at least as protective of credit applicants as federal law. As was stated in the Senate Report:

> "The [prior] Equal Credit Opportunity Act leaves almost totally unclear the status of existing or future state laws dealing with discrimination in credit transactions. The Committee believes *that practices of discrimination are so abhorrent that federal law ought not foreclose the states from initiating their own laws unless those laws are incompatible with this legislation.* A similar policy has been adopted by the Congress with respect to Truth in Lending and more recently with the Fair Credit Billing Act.

> This bill clarifies the relationship of the Equal Credit Opportunity Act to state law in several ways.
>
> . . . .
>
> New subsections (f) and (g) of section 705 track similar language in the Fair Credit Billing Act. *State law is displaced by this Act only to the extent of inconsistencies* between them, and the Board [of Governors of the Federal Reserve System] may determine whether such inconsistencies exist. . . . *The Committee intends that those state laws which give greater protection to the applicant, as determined by the Board, shall apply equally to all credit granting institutions doing business in that state.*
>
> . . . Subsection 705(g) like comparable provisions in the Truth in Lending and Fair Credit Billing Acts, will permit classes of transactions in such states to be exempted from the substantive requirements and prohibitions of the federal law whenever the local law is substantially the same or stronger than the federal. To resolve an uncertainty under prior legislation, this bill makes clear that where such exemptions are made in favor of state law, the full remedial and enforcement structure of this Act remains in place. Thus aggrieved applicants retain their access to the federal courts, and the federal enforcement agencies may retain their authority to act against violators. It is expected, however, that these agencies will generally defer to the appropriate state officials." S. REP. NO. 94-589, 94th Cong., 2d Sess. 12-13 (1976), *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 403, 414-15 (emphasis added).

Thus, Congress, in the statute which most closely deals with redlining and other forms of discrimination (the subject of the California Act in question), specifically permitted the states to enact and enforce statutes designed to eliminate discrimination in lending.

2. Title VIII

This Court has declared that "the 1968 Civil Rights Act specifically preserves and defers to local fair housing laws . . . so as not to preempt the local legislation." *Hunter v. Erickson*, 393 U.S. 385, 388 (1969). Congress specifically stated that nothing in that Act should "be construed to invalidate or limit any law of a state or political subdivision of a state . . . that grants, guarantees, or protects the same rights as are granted by this subchapter" 42 U.S.C. § 3616.[14]

Title VIII thus permits states, as well as the federal government, to redress discrimination. Given the language of that Act, it is clear that Congress did not intend that the Board have exclusive jurisdiction to deal with discrimination by federally-chartered savings and loan associations.[15]

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[14]*See also* 42 U.S.C. §§ 3608 (federal agencies shall cooperate with the Secretary of Housing and Urban Development and the Secretary shall cooperate and render technical assistance to federal agencies and states), 3610 (Secretary shall defer to state law and enforcement when state rights and remedies are substantially equivalent to those under federal law), 3615 (nonpreemption of state law), 3616 (Secretary may reimburse state officials for certain expenses incurred in implementing Act); Laufman v. Oakley Bldg. & Loan Co. 408 F. Supp. 489 (S.D. Ohio 1976).

[15]That Board regulations refer complainants to the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 12 C.F.R. § 528.5 (1979), suggests that the Board recognizes that anti-discrimination activities are to be conducted pursuant to Title VIII provisions.

3. The Home Mortgage Disclosure Act

The Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801-2809, deals with the congressional finding that lending practices of some institutions may have contributed to the decline of certain geographic areas. *Id.* § 2801(a). Accordingly, Congress provided that banks and savings and loan institutions and other institutions maintain and provide certain statistical information. *Id.* § 2803. The terms of the statute terminate in 1980. *See id.* §§ 2808-2809. Section 2805 provides:

> "This chapter does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this chapter from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor institutions except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board [of Governors of the Federal Reserve Board] is authorized to determine whether such inconsistencies exist. . . ." *Id.* § 2805(a).

Appellees *infer* from section 2805 that Congress intended to preempt as to federally-chartered institutions. Even if any such preemption were intended, it would only apply to "public disclosure and recordkeeping." *National State Bank v. Long*, 469 F. Supp. 1068 (D.N.J. 1979). In fact, preemption makes no sense in light of the self-destruct provision of the statute. But more important is the fact that the legislative history of the statute conclusively establishes that Congress did not intend to preempt the subject of the California Act. The House Conference Report for the Home Mort-

gage Disclosure Act discussed the history of the House and Senate bills and concluded:

> *"The Senate conferees regard the House provision concerning Federal pre-emption as an exception to the pre-emption provisions of other consumer finance laws, including the Truth in Lending and the Fair Credit Billing Acts, which contain provisions similar to the Senate provisions of S. 1281.*
>
> In the case of mortgage disclosure, however, the conferees ont [*sic*] the part of the House strongly believe that subjecting a Federally chartered institution to state law would threaten the dual banking system.
>
> *With the understanding that this program goes only to the narrow area of geographical disclosure of mortgage lending statistics*, the Senate conferees agreed to the House provision, which is included in the conference report." H.R. CONF. REP. 94-726, 94th Cong., 1st Sess. 10 (1975) *reprinted in* [1975] U.S. CODE CONG. & AD. NEWS 2333, 2336 (emphasis added).

Thus, in passing the Home Mortgage Disclosure Act, Congress did not *expressly* preempt anything, and to the extent there was any preemption, it was only with regard "to the narrow area of geographical disclosure of mortgage lending statistics." Finally, the Report further demonstrates Congress' understanding that there was no preemption with respect to other antidiscrimination in lending programs.[16] *See also* 125 CONG. REC.

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[16]It should be noted that a Congressional Committee referred to the Board's rulings that federal savings and loan associations do not have to comply with state laws "even in those cases

S2165-66 (daily ed. March 7, 1979) (remarks of Senator Proxmire relating to the misuse by the Board in this case of his comments in regard to other legislation).

Congress has consistently declared its intention to "supplement rather than supplant" other laws which combat discrimination. *Alexander v. Gardner-Denver*, 415 U.S. 36, 48-49 (1974). In the area of civil rights, "legislative enactments . . . have long evinced a general intent to accord parallel or overlapping remedies against

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where the state law affords the borrower with a greater degree of protection." S. REP. NO. 93-902, 93d Cong., 2d Sess. 12 (1974), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 6119, 6130. The Committee then stated,

> "During the Committee's consideration of this issue, some doubt was expressed that the Bank Board has the authority to preempt state law by regulation. . . .
>
> Unless there are overriding interests to the contrary, the federal government should not interfere with the efforts of a State to protect consumers. Federally chartered financial institutions are subject to a wide variety of State laws including laws dealing with taxes, branching, fire and building codes, conversions, usury and the like. The Committee sees no reason to make a special exception for consumer protection laws. . . .
>
> Even if a case could be made for preempting a State consumer protection law in a particular area, the power to reverse the judgment of a State should not be delegated to a federal administrative agency. The Comptroller of the Currency and the National Credit Union Administration are headed by one man, while the Federal Home Loan Bank Board is headed by three. These non-elected officials should not be given the power to over-rule by a stroke of the pen, the considered judgment of a State Legislature and its governor. Only Congress should make such a decision if it is to be made at all. . . .
>
> If federally chartered financial institutions are exempted from State consumer protection laws, these institutions would be given an unfair competitive advantage over State chartered financial institutions. If State chartered institutions are able to live under State consumer protections laws, there is no reason why federally chartered institutions should not abide by the same rules."

discrimination." *Id.* at 47.[17] The Home Mortgage Disclosure Act should be construed to supplement and not supplant state-law remedies against discrimination in lending.

D. HOLA Does Not Provide a Basis for Preemption

There should be no difficulty reconciling ECOA and Title VIII with HOLA. Unlike HOLA, ECOA and Title VIII specifically deal with discrimination.

> "[W]hen two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed Congressional intention to the contrary, to regard each as effective." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976), *quoted in SDC Development Corp. v. Mathews*, 542 F.2d 1116, 1120 (9th Cir. 1976).

Accord, International Union of Electrical, Radio & Machine Workers v. NLRB, 289 F.2d 757, 761 (D.C. Cir. 1960).[18]

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[17]First Federal Savings & Loan Ass'n v. Greenwald, 591 F.2d 417 (1st Cir. 1979) is not relevant because in that case the court held that federal regulations in question were promulgated pursuant to HOLA, and not pursuant to Real Estate Settlement Practices Act, 12 U.S.C. § 2616, and that there was an explicit conflict between federal regulations and state law. *Id.* at 425-26. The court specifically said it did not rely upon an occupation of the field theory. *Id.* at 426 n.16. In the instant case, Board regulations provide they are enacted pursuant to acts other than HOLA.

[18]There is no language in HOLA suggesting preemption. Even if there were, then the Court might be faced with an apparent conflict in legislation. In that event, of course, the later and more specific legislation (the Civil Rights legislation) would govern. *See, e.g.*, NLRB v. Drivers Local Union No. 639, 362 U.S. 274, 291-92 (1960) ("Courts may properly take into account the later Act when asked to extend the reach of the earlier Act's vague language to the limits which, read literally, the words might permit.").

It cannot be argued seriously that state anti-discrimination legislation frustrates any purpose of HOLA, since presumably the federal government and California have the same goal—the elimination of discrimination in lending. The California Act does not preclude the federal regulation by the Board at all. The fact that federal and state antidiscrimination legislation may apply concurrently is no novelty. There are many areas where both federal and state laws are applicable—from securities regulation to criminal laws. *See William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 461 F. Supp. 410, 423 (N.D. Cal. 1978) (federal antitrust laws do not preempt state antitrust laws even though they have different standards). So long as the federal and state legislation "are directed toward the same overall purposes" there is no interference. *Id.*; *Rousseff v. Dean Witter & Co.*, 453 F. Supp. 774, 781 (N.D. Ind. 1978).

As a recent court decision noted: "The conflict necessary to invalidate state legislation under the Supremacy Clause requires more than a mere difference in the legislation." *Rousseff v. Dean Witter & Co. Inc.*, 453 F. Supp. 774, 781 (N.D. Ind. 1978). This Court recently stated:

> "A conflict will be found 'where compliance with both federal and state regulations is a physical impossibility . . .' or where the state 'law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978) (citations omitted).

Thus, if compliance with state law and federal law is not impossible or if the purpose of state law is

not "repugnant" to "the primary purpose" of the federal law, then there can be no preemption, even if state law imposes a higher standard than federal law. *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 141-44 (1963); *Rousseff v. Dean Witter & Co. Inc.,* 453 F. Supp. 774, 781-82 (N.D. Ind. 1978).

In the instant matter there is no conflict between federal statutes and state law. There has been no showing, for example, that state-chartered associations, which by virtue of federal insurance requirements are subject to both state and federal antidiscrimination laws, *see* 12 U.S.C. §§ 1724-1726; 12 C.F.R. §§ 528.1 (b)(1); 561.1-.37, cannot comply with both federal and state laws. Even if one could imagine some hypothetical conflict, it would not result in preemption. As this Court has stated: "But, '[i]n this as in other areas of coincident federal and state regulation, the "teaching of this Court's decisions . . . enjoin[s] seeking out conflicts between state and federal regulation where non clearly exists."' . . . This sort of hypothetical conflict is not sufficient to warrant preemption." *Exxon v. Maryland,* 437 U.S. 117, 130-31 (1978) (citations omitted). *See also Goldstein v. California,* 412 U.S. 546, 554-55 (1973).

And assuming, *arguendo,* that the Board could preempt by regulation,[19] there is absolutely nothing

[19]It is "the intent of Congress" that determines whether there is preemption. Malone v. White Motor Corp., 435 U.S. 497, 504 (1978). Professor John Hetland has referred to the Board's efforts to preempt by regulation as "a doubtful premise in view of the scope of preemption permissible under powers delegated to it by Congress." J. Hetland, SECURED REAL PROPERTY TRANSACTIONS 32 (1977). "Only rarely does the [Supreme] Court respect clear expressions of agency intent to supersede or to preempt state laws." Hirsh, *Toward A*

in the Board regulations previously in effect or those now in effect that is inconsistent with the California Act. 12 C.F.R. §§ 528.1-528.8 (1976); 12 C.F.R. §§ 528.1-528.8 (1979). The federal regulations provide for non-discrimination in lending practices. The California Act has the same goal.

Just because HOLA establishes a comprehensive regulatory scheme does not require preemption. As this Court said:

> "We reject, to begin with, the contention that pre-emption is to be inferred merely from the comprehensive character of the federal work incentive provisions. . . . The subjects of modern social and regulatory legislation often by their very nature require intricate and complex responses from the Congress, but without Congress necessarily intending its enactment as the exclusive means of meeting the problem . . . ." *New York State Department of Social Services v. Dublino,* 413 U.S. 405, 415 (1973) (citations omitted).

There is no question of any need for uniformity. A federally-chartered savings and loan association generally may do business only within one state. 12 C.F.R. § 546.6-6.

The Federal Home Loan Bank Board was authorized to adopt regulations reflecting the "best practices of local mutual thrift and home-financing institutions in the United States," HOLA, § 5(a), 12 U.S.C. § 1464(a). But this authorization does no more than

New View Of Federal Preemption [1972] U. ILL. L. FORUM 515, 551. As noted *supra,* Board statements, opinions, resolutions or material introductory to the regulations do not have the effect of law. Chrysler Corp. v. Brown, ... U.S. ..... 99 S.Ct. 1705 (1979).

provide standards for the Board's enactment of its regulations. Congress did not thereby purport to establish the scope of the Board's exclusive regulatory powers.

That the Board may have exclusive authority with respect to some activities of the federal associations does not mean it has exclusive authority over all aspects touching upon these institutions (such as discrimination, crimes, zoning, wages and working conditions, etc.). As the Court stated in *Kelly v. Washington*, 302 U.S. 1, 10 (1937):

> "There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside the limited field and otherwise permissible is not forbidden or displaced."

HOLA deals with chartering associations and regulating the internal operations of the associations and their staffs. The purpose and effect of HOLA is to insure financially sound lending practices and to provide for the health and stability of the federal associations. *See, e.g.*, 12 U.S.C. § 1464. Non-discrimination laws do not deal with institutional efficiency or reliability. Rather, they are calculated to eliminate racial and sex discrimination from the area of housing, loans and employment. Indeed, the Board was just one of many federal agencies given the responsibilitity to enforce civil rights and equal credit legislation. 42 U.S.C. § 1691.

There is nothing in HOLA or in its legislative history suggesting that state laws, such as the California Act,

should be or are preempted.[20] Such preemption would not only be contrary to later civil rights legislation, but would be inconsistent with established principles and public policy.

If HOLA somehow excludes the state from having state laws apply to federally-chartered institutions, those institutions would in effect be federal enclaves. Does HOLA suggest that state anti-deficiency legislation does not apply to federally-chartered institutions? Or that a crime occurring on the premises of a federally-chartered institution cannot be prosecuted by state authorities? Or that zoning laws do not apply to federally-chartered institutions? Or that state health and safety laws are not applicable to employees of the federal associations? Of course not. And it is equally absurd to say that the state cannot take steps to pre-

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[20]Assuming that the comments of the first Board Chairman are relevant (" 'The individual opinions of witnesses at hearings are of dubious value in interpretations of legislation.' " March v. United States, 506 F.2d 1306, 1314 n.30 (D.C. Cir. 1974)), he testified that the Board wanted "the latitude . . . to fit the regulations of the board and the associations to the states and the different needs." *Hearings on HOLA, H.R. 4980, Before House Comm. on Banking & Currency*, 73d Cong., 1st Sess. 7 (April 20, 1933) (statement of William F. Stevenson, Chairman, Federal Home Loan Bank Board). Board Chairman Stevenson's comment suggests that HOLA gave the Board discretion to facilitate the federal associations' compatability with local law, which local law would be applicable.

Moreover, one week prior to the enactment of HOLA, Chairman Stevenson stated to the United States Senate that the purpose of the Act was to provide access to long-term mortgage funding. He said: "These associations will be cooperative mutual saving funds, substantially all of which funds will be loaned on homes *in the community*. They will be organized under a Federal charter, but will operate locally and be managed locally." S. Doc. No. 74, 73d Cong., 1st Sess. 4 (1933) (statement of William F. Stevenson, Chairman, Federal Home Loan Bank Board) (emphasis added).

vent federally-chartered institutions from discriminating against California citizens.

There can be no question that the states' historic police powers have included the regulation of real property, lending and mortgage transactions, as well as discrimination. *See, e.g., United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 591-92 (1973). It has never been thought that federal associations are or could be immune from all state law.[21]

By claiming immunity from California law protecting borrowers, while at the same time invoking and taking advantage of other California laws concerning real property laws, such as those concerning foreclosure and recording, the federal savings and loan associations are in effect asserting the right to pick and choose

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[21]Cases have found no preemption in the application of state law to federally-chartered savings and loan associations and other federally-chartered institutions. *See, e.g.*, Federal National Mtg. Ass'n v. Lefkowitz, 390 F. Supp. 1364, 1368-70 (S.D. N.Y. 1975) (state law on interests on impound accounts applies to national banks); Beverly Hills Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd., 371 F. Supp. 306, 313 (C.D. Cal. 1973); Durnin v. Allentown Fed. Sav. & Loan Ass'n 218 F. Supp. 716, 720-21 (E.D Pa. 1963) (state law applies to right to membership list); Garrett v Coast & Southern Fed. Sav. & Loan Ass'n, 9 Cal. 3d 731, 108 Cal. Rptr. 845, 511 P.2d 1197 (1973) (in holding late charge provisions invalid, the court impliedly found no preemption); Larwood Co. v. San Diego Fed. Sav. & Loan Ass'n, 185 Cal. App. 2d 450, 454-55, 8 Cal. Rptr. 362 (1960) (state courts may resolve disputes between federal associations and others; only internal matters must be resolved by the Board); Pearson v. First Fed. Sav. & Loan Ass'n, 149 So.2d 891, 895-96 (Fla. App. 1963) (state law applies to validity of proxies for election of federal association's directors); First Fed. Sav. & Loan Ass'n v. Norwood Realty Co., 212 Ga. 524, 93 S.E.2d 763 (1956) (state usury law applies to federal association); Derenco Inc. v. Benj. Franklin Fed. Sav. & Loan Ass'n, 281 Or. 533, 577 P.2d 477, *cert. denied*, 439 U.S. 1051 (1978).

those parts of California law which it will allow to be applied. Such selectivity cannot be permitted. *See First National Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966) (Court upheld state law as it applied to national banks, stating: "It is a strange argument that permits one to pick and choose what portion of the law binds him."). Moreover, it is clear that the lending documents of the plaintiffs are subject to and apply California law. CR 802-05, 937, 952-62. Thus, the associations have agreed to be bound by California law, at least as to rights of borrowers and potential borrowers. *See United States v. Crain*, 589 F.2d 996, 1000 (9th Cir. 1979) (state law defense of equitable subrogation available to SBA loan guarantor); *United States v. Stewart*, 523 F.2d 1070 (9th Cir. 1975) (California's anti-deficiency provision applied to a Veteran's Administration loan because the deed of trust provided that the contract was to be construed under California law); *United States v. MacKenzie*, 510 F.2d 39 (9th Cir. 1975) (debtor is entitled to the protection of state law with respect to the government's foreclosure of security for SBA loan).

Rather than doing what this Court said it was reluctant to do—infer preemption, *Exxon v. Governor of Maryland*, 437 U.S. 117, 132 (1978), courts should reconcile HOLA with both later federal law and state laws.

E. It Is Important That This Court Summarily Reverse or Hear This Case

After relying for years on the federal government, states are now assuming their responsibilities to prevent discrimination—in this case discrimination in lending.[22] If a state cannot apply uniform rules to financial institutions doing business in that state, the state's efforts will be handicapped. A citizen's rights will depend on the fortuitous factor of whether he or she applied to a state or federal association for a loan. If it is a federal association, the discrimination victim in California will have to complain either to distant federal authorities or not at all.

The Federal Home Loan Bank Board was given enforcement responsibility only because it was one of at least twelve agencies directed by Congress to apply civil rights and equal credit legislation to institutions it already regulated. 15 U.S.C. § 1691(c), 42 U.S.C. § 3608. If the determination as to whether state anti-discrimination law is preempted depends on general legislation establishing the federal agency, then whether an institution in California is subject to state law will depend on whether compliance with federal civil rights legislation is supervised by the Federal Home Loan Bank Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the administrator of the National Credit Union Administration, the Federal Reserve Board or other federal agencies. Such lack of uniformity would be manifestly inconsistent with the goal of ending discrimination and redlining.

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[22]In criticizing "the trend toward federal pre-emption of state law in financial affairs," Senator Morgan urged that "the notion that superior wisdom somehow resides only in Washington" be dispelled. *The State Advisor* (official publication of the National Association of State Savings and Loan Supervisors), Summer, 1978, at 5.

Dealing with the complex social and economic aspects of redlining requires local efforts. California and other states should not be precluded from dealing with these problems as they relate to a large segment of the financial institutions in the states.

It is important that this Court consider the issue presented by this case so as to deter confusion concerning and even abandonment of state antidiscrimination programs. In addition, as noted above, the broad language of preemption contained in the Ninth Circuit Court of Appeals opinion will call into question the applicability of many state laws in California—a state in which exists the greatest concentration of savings and loan institutions in the country. Moreover, it is important to the savings and loan industry to have a definitive resolution of this problem. Otherwise, it will be subjected to continued costly litigation and uncertainty.

Accordingly, for all of the foregoing reasons, California urges this Court either to reverse summarily the judgment below or hear oral argument in this case. The Court should note probable jurisdiction of this appeal.

Dated: December 7, 1979.

Respectfully submitted,

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APPENDIX.

Opinion.

In the United States Court of Appeals, for the Ninth Circuit.

Conference of Federal Savings and Loan Associations, a California corporation; and Alameda Federal Savings and Loan Association; Bay View Federal ings and Loan Association; California Federal Savi and Loan Association; Coast Federal Savings and Loan Association; Eureka Federal Savings and Loan Association; First Federal Savings and Loan Association of San Diego; First Federal Savings and Loan Association of Santa Monica; First Federal Savings and Loan Association of South Pasadena; Home Federal Savings and Loan Association of San Diego; Orange Belt Federal Savings and Loan Association; Pacific Federal Savings and Loan Association; Peoples Federal Savings and Loan Association; Pomona First Federal Savings and Loan Association; Provident Federal Savings and Loan Association of Riverside; Redlands Federal Savings and Loan Association; Republic Federal Savings and Loan Association; San Francisco Federal Savings and Loan Association; Santa Fe Federal Savings and Loan Association; the Heart Federal Savings and Loan Association; and Western Federal Savings and Loan Association, each of which is an association organized and operating as an instrumentality of the United States of America pursuant to Section 5(a) of the Home Owners' Loan Act of 1933, as amended [12 U.S.C. 1464(a)], Plaintiffs-Appellees, vs. Alan L. Stein, Successor in office to Richard T. Silberman, as Secretary of the Business and Transportation Agency of the State of California, Defendant-Appellant.

Federal Home Loan Bank Board, Cross Claimant-Appellee, vs. Alan L. Stein, etc., Cross Defendant-Appellant. No. 78-3201.

On Appeal from the United States District Court for the Eastern District of California.

Filed: Sept. 26, 1979.

Before: MERRILL and HUG, Circuit Judges, and PORT,* District Judge.

MERRILL, Circuit Judge:

The question presented on this appeal is whether the appellant, Secretary of the Business and Transportation Agency of the State of California, has power to regulate federal savings and loan associations under California's Housing Financial Discrimination Act of 1977, Cal. Health & Safety Code §§35800 *et seq.* (the Act). The district court held that he has not. It adjudged that "the [Federal Home Loan] Bank Board's exercise of its plenary regulatory power granted by Congress under [the Home Owners' Loan Act] preempts legislation by the State of California which attempts to subject federal savings and loan associations in California to state regulation and discipline in the area of anti-redlining practices." We affirm.

The Home Owners' Loan Act of 1933, 12 U.S.C. §§1461 *et seq.* (HOLA), was the result of congressional dissatisfaction with state law and practice in the financing of home construction. The first federal effort was through the Home Loan Bank Act of 1932. This failed to attack the problem satisfactorily. By 1933, 40 percent of all home loans in the United States

*Honorable Edmund Port, Senior United States District Judge of the Northern District of New York, sitting by designation.

were in default. Under date of April 13, 1933, President Roosevelt wrote the Congress:

> "I ask the Congress for legislation to protect small home-owners from foreclosure and relieve them of a portion of the burden of excessive interest and principal payments incurred during the period of higher values and higher earning power."

H.R. Doc. No. 19, 73d Cong., 1st Sess. 1618, 1702 (1933).

The result was HOLA, a radical and comprehensive response to the inadequacies of the existing state systems. A *federal* savings and loan system was created. The Federal Home Loan Bank Board (the Bank Board) was created with extremely broad powers to promulgate rules and regulations. 12 U.S.C. §1464(a) provides in part:

> "In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations' * * * and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

With reference to HOLA, one writer has stated:

> "* * * the states had developed a hodgepodge of savings and loan laws and regulations, and Congress hoped that FHLBB rules would set an

example for uniform and sound savings and loan regulations."

T. Marvell, *The Federal Home Loan Bank Board,* p. 26 (1969).

Pursuant to its authority, the Bank Board has promulgated regulations comprehensively dealing with the creation and operation of federal savings and loan associations. They deal with the manner in which capital may be raised by a federal association, earnings distributed, and withdrawals effectuated. See 12 C.F.R. §§545.1-.4. The powers of a federal savings and loan association to borrow, give security, issue notes, bonds, debentures or obligations are prescribed and authorized. 12 U.S.C. §1464(b)(2). The authority of a federal association to make and purchase loans and otherwise invest in real estate is subject to regulation. 12 U.S.C. §1464(c); 12 C.F.R. §545.6.

In recent years the Congress, in various civil rights statutes, has directed its attention to specific problems of borrowers relating to discrimination in the extending of credit and granting of loans. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§3601 *et seq.;* The Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§1691 *et seq.;* The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. §§2801 *et seq.* Language in these acts and in their legislative histories indicates a congressional intent that they shall not result in federal pre-emption of similar rights granted by state statutes. For example, ECOA states in part:

> "This subchapter does not annul, alter or affect, or exempt any person subject to the provisions of this subchapter, from complying with, the law of any State with respect to credit discrimination,

> except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The [Federal Reserve] Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this subchapter if the Board determines that such law gives greater protection to the applicant."

15 U.S.C. §1691d(f). The legislative history of ECOA contains a congressional statement to the following effect:

> "The Committee intends that those state laws which give greater protection to the applicant, as determined by the Board, shall apply equally to all credit granting institutions doing business in that state."

1976 U.S. Code Cong. & Ad. News 403, 414.

All of these acts provide the Bank Board with authority to promulgate rules and regulations prohibiting discrimination.

Pursuant to this authority regulations have been adopted by the Bank Board. They prohibit discrimination on the basis of race, color, religion and sex, and also prohibit red-lining - credit discrimination based on the characteristics of the neighborhood surrounding the borrower's dwelling. The regulations provide for monitoring of federal savings and loan associations by the Bank Board and establish an enforcement mechanism and require posting of notices in a prescribed form.

California's Housing Financial Discrimination Act of 1977 contains provisions prohibiting discrimination in lending "due * * * to the consideration of race,

color, religion, sex, marital status, national origin or ancestry" of the borrower, Cal. Health & Safety Code §35811, or "due * * * to the consideration of conditions * * * in the neighborhood or geographic area surrounding the housing accommodation" of the borrower, *id.* §35810 (the practice commonly known as "redlining"). The Act also provides: "The Secretary [of the Business and Transportation Agency] * * * shall monitor and investigate the lending patterns and practices of financial institutions for compliance * * *." *Id.* at §35815. The Act provides procedures for the resolution of complaints. Complaints may be filed with the Secretary by aggrieved applicants and the Secretary shall determine whether a violation has occurred, shall make findings, may issue cease and desist orders and impose penalties, all subject to judicial review. *Id.* §§35820-23. Notices in a prescribed form are required to be posted advising loan applicants of their rights and where complaints may be filed. *Id.* §35830.

After passage of the state act, appellant, by directive of December 15, 1977, notified all lending institutions operating in California, including federal savings and loan associations, that they would be required to abide by the provisions of the Act. The Federal Home Loan Bank Board responded with an opinion that the state act did not apply to federal savings and loan associations. On February 6, 1978, the Conference of Federal Savings and Loan Associations and certain federal associations, appellees herein, brought this suit against appellant, the Secretary of the state agency. The Bank Board was also sued nominally as a necessary party. Appellees sought a declaration that the Act was pre-empted by federal legislation and regulations. The Bank Board filed a cross claim against

appellant, seeking to enjoin him from attempting to enforce the provisions of the state act against the federal associations.

Appellant responded by bringing suit against the West Coast Federal Savings and Loan Association in Superior Court of San Mateo County, California (*People v. West Coast Federal Savings and Loan Ass'n*, No. 220012 (Cal.Super.Ct. Feb. 28, 1978). The defendant was charged with having violated state law by refusing to comply with appellant's directive of December 15, 1977. Appellant sought statutory damages in the sum of $2500 for each failure to post notice and each failure to supply a loan applicant with a copy of appellant's prescribed notice.

Jurisdiction

Appellant contends that there is no federal question involved in this action, and that the district court was without jurisdiction. He argues that pre-emption is only a federal defense to a potential state claim made under the Act, citing *Public Service Commission v. Wycoff Co.*, 344 U.S. 237, 248 (1952). There, a carrier sought judgment declaring that it was engaged in interstate commerce and enjoining the Public Service Commission of Utah from interfering with its interstate shipments. The Court stated:

> "The plaintiff is seeking to establish a defense against a cause of action which the declaratory defendant may assert in the Utah courts. Respondent here has sought to ward off possible action of the petitioners by seeking a declaratory judgment to the effect that he will have a good defense when and if that cause of action is asserted."

Relief was denied.

That case is distinguishable, however. There, the majority concluded that there was no proof of any threatened or probable act by the state commission which might cause the irreparable injury essential to equitable relief or which could serve to create the actual controversy necessary for declaratory judgment jurisdiction. Here, an actual conflict exists created by the conflicting positions taken by appellant and the Bank Board. *See First Federal Savings and Loan Ass'n of Boston v. Greenwald*, 591 F.2d 417, 423 n. 8 (1st Cir. 1979).

> "Both the state and federal regulations are currently in effect, subjecting the associations to conflicting requirements * * *."

An actual justiciable controversy is thus presented.

Pre-Emption

Appellees argue and the district court held that the state act does not apply to federal savings and loan associations since the field of regulatory control is pre-empted by federal regulations.

Pre-emption of state legislation by federal acts arises from the Supremacy Clause, U.S. Const. art. VI, cl. 2. Courts begin their analysis of a potential pre-emption issue with the "assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that [is] the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). However, implicit pre-emption can be found where the scheme of federal regulation is so pervasive as to make reasonable the inference that there is no room for state action. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978).

Appellant urges that there is no pre-emption. He finds no conflict between the state and federal regulations. More importantly, he argues that the federal statutes which provide the authority for the Bank Board's regulations specifically call for no pre-emption of state statutes that provide equal or greater protection to borrowers.

The state act and the regulations of the Bank Board can be divided into two groups. First are the substantive nondiscrimination provisions—those conferring substantive rights upon borrowers to be free from discriminatory practices in the lending of money or extending of credit. No dispute presently exists as to those. We are not faced with a suit by a borrower against a federal association charging a violation of a substantive state regulation. If the nonpre-emption intent of the Civil Rights Acts (that the applicant should have the benefit of what, in the judgment of the Federal Reserve Board is the greater protection afforded) is to be given effect, it would apply to those substantive rights. Whether pre-emption exists as to them is a question we need not and do not reach.

Constituting a second group are the procedural aspects of the Act and the federal regulations—those providing for regulatory control over the lending institutions to insure that the substantive rights of borrowers are respected. These include regulations providing for monitoring, for enforcement and complaint resolution mechanism and for notice. It is the regulatory authority of appellant over the federal associations in these respects that is here in dispute.

In our judgment the regulatory control of the Bank Board over federal savings and loan associations is so pervasive as to leave no room for state regulatory control. As this court noted in *Meyers v. Beverly Hills*

Federal Savings & Loan Ass'n., 499 F.2d 1145, 1147 (9th Cir. 1974):

> "Pursuant to its valid statutory authority, the Federal Home Loan Bank Board has promulgated comprehensive regulations covering all aspects of every federal savings and loan association 'from its cradle to its corporate grave.' People of State of California v. Coast Federal Savings and Loan Ass'n., S.D.Ca. 1951, 98 F.Supp. 311, 316."

The broad regulatory authority over the federal associations conferred upon the Bank Board by HOLA does wholly pre-empt the field of regulatory control over these associations. If state-conferred rights are to be enforced against the federal associations by any regulatory body (a question we do not reach), enforcement must be by the Bank Board.

Judgment affirmed.

Statement of Intended Decision.

In the United States District Court, for the Eastern District of California.

Conference of Federal Savings and Loan Associations, etc., et al., Plaintiffs, v. Richard T. Silberman, etc., et al., Defendants.

Federal Home Loan Bank Board, Cross-Claimant, v. Richard T. Silberman, etc., Cross-Defendant. Civ. No. S-78-55 PCW.

This matter came on regularly for hearing May 1, 1978 for:

(1) the motions of defendant Richard T. Silberman, California Secretary of Business and Transportantion to dismiss the complaint and cross-complaint or, in the alternative, to stay proceedings in the action, and to strike certain language and appendices from the complaint;

(2) the motion of defendant Federal Home Loan Bank Board seeking to enjoin further state proceedings to enforce the California Housing Financial Discrimination Act of 1977 as against federally chartered savings and loans, and, more particularly, the proceedings in *Silberman v. West Coast Federal*, No. 220012, Superior Court of California, San Mateo, an enforcement action instituted *subsequent* to plaintiff's filing of the instant suit for declaratory relief in this Court; and

(3) the motion of plaintiff Conference of Federal Savings and Loan Associations for partial summary judgment on the question of federal preemption in the area of the regulation of red-lining practices of federally chartered savings and loans and request for entry of final judgment pursuant to FRCP 54(b).

The Court, having considered the copious points and authorities and oral arguments of counsel, makes this statement of intended decision.

I. The Court is of the opinion that subject matter jurisdiction over the complaint exists under 28 U.S.C. §1331 and 28 U.S.C. §1337. A bona fide controversy arose between plaintiffs, Conference and individual Savings and Loan Associations, and defendants, Federal Home Loan Bank Board and California Secretary of Business and Transportation, when plaintiffs received conflicting directives regarding anti-redlining notices from the respective defendants. That controversy arises under the Home Owners' Loan Act of 1933, 12 U.S.C. §1461 *et seq.* (an Act of Congress regulating Commerce within the meaning of 28 U.S.C. §1337), and exists independent of the subsequently filed state enforcement action now pending in the San Mateo Superior Court. Because subject matter jurisdiction exists in this Court independent of the state proceedings, and any defense thereto, the *Wycoff* rule will not oust this Court of jurisdiction.

II. The Court is of the opinion that subject matter jurisdiction over the Federal Home Loan Bank Board's cross-complaint exists both by way of ancillary jurisdiction and by way of independent jurisdiction under 28 U.S.C. §1331, 28 U.S.C. §1337, and 28 U.S.C. §1345. As stated above, the Home Owners' Loan Act of 1933 is an Act of Congress regulating Commerce within the meaning of 28 U.S.C. §1337. Further, in the opinion of this Court, Section 5(d)(1) of that Act, 12 U.S.C. §1464(d) (1), which grants the Federal Home Loan Bank Board the "power to enforce this section and the rules and regulations hereunder", expressly authorizes the Federal Home Loan Bank Board,

as an agency of the United States, to bring suit to protect its regulatory power under that statute within the meaning of 28 U.S.C. §1345.

III. The Court declines, in its discretion, to stay this action pending resolution of the same or similar issues in other forums.

IV. Defendant Silberman's motion to strike certain language and appendices from the complaint will also be denied:

(a) The Conference of Federal Savings and Loan Associations is a proper party plaintiff.

(b) The Court is capable of disregarding any surplusage created by the incorporation of Exhibits "A" and "B" to the plaintiffs' complaint.

(c) The Court is of the opinion that no "scandalous" or "impertinent" characterizations of Secretary Silberman's conduct have been made.

(d) The Federal Home Loan Bank Board's cross-claim is properly before this Court. The Board is a proper party defendant and need not be "realigned". The fact that plaintiffs would prefer to comply with the Federal Home Loan Bank Board's directives over those of Secretary Silberman in no way denigrates from the actual controversy created by the conflicting assertions of regulatory authority by the two defendants.

V. Plaintiff's motion for partial summary judgment on the red-lining practices preemption question will also be granted. It is the opinion of this Court that the Federal Home Loan Bank Board's exercise of its plenary regulatory power, granted by Congress under the Home Owners' Loan Act of 1933, "to provide for the organization, incorporation, examination, opera-

tion and regulation of associations . . .", preempts legislation by the State of California which attempts to subject federally chartered savings and loans to state regulation and discipline in the area of anti-redlining practices. *Meyers v. Beverly Hills Federal Savings & Loan Ass'n.*, 499 F.2d 1145 (9th Cir. 1974). Language contained in the Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq.*, and in the Home Mortgage Disclosure Act of 1975, 12 U.S.C. §§2801-2809, in no way limits the Federal Home Loan Bank Board's plenary regulatory power under the Home Owners' Loan Act of 1933, 12 U.S.C. §1461 *et seq.*

VI. Plaintiffs' request for entry of final judgment as to this issue under FRCP 54(b) will also be granted that the parties may seek immediate appeal of this ruling should they so desire. There is no just reason for delay.

VII. While the Court is of the opinion that the Federal Home Loan Bank Board's motion seeking to enjoin further state enforcement proceedings, based on the provisions of the California Housing Financial Disclosure Act of 1977, as against federally chartered savings and loans could also be granted under the authority of *NLRB v. Nash-Finch*, 404 U.S. 138, 144 (1971) and its progeny, such an order would appear to be unnecessary in the light of this Court's ruling on plaintiff's motion for partial summary judgment and certification of that question for immediate appeal. However, should circumstances arise where such an injunction might be necessary in aid of this Court's jurisdiction or to protect and effectuate its judgments, See 28 U.S.C. §2283, the Court would entertain a renewal of the motion.

Counsel for either of the prevailing parties, the Federal Home Loan Bank Board or Conference of Federal Savings and Loan Associations, is directed to prepare proposed findings of fact and conclusions of law and a proposed order for submission to the Court pursuant to Local Rule 121.

DATED: May 9, 1978.

/s/Philip C. Wilkins
UNITED STATES DISTRICT JUDGE

Findings of Fact and Conclusions of Law.

United States District Court, Eastern District of California.

Conference of Federal Savings and Loan Associations, a California corporation; and Alameda Federal Savings and Loan Association; Bay View Federal Savings and Loan Association; California Federal Savings and Loan Association; Coast Federal Savings and Loan Association; Eureka Federal Savings and Loan Association; First Federal Savings and Loan Association of San Diego; First Federal Savings and Loan Association of Santa Monica; First Federal Savings and Loan Association of South Pasadena; Home Federal Savings and Loan Association of San Diego; Orange Belt Federal Savings and Loan Association; Pacific Federal Savings and Loan Association; Peoples Federal Savings and Loan Association; Pomona First Federal Savings and Loan Association; Provident Federal Savings and Loan Association of Riverside; Redlands Federal Savings and Loan Association; Republic Federal Savings and Loan Association; San Francisco Federal Savings and Loan Association; Santa Fe Federal Savings and Loan Association; the Heart Federal Savings and Loan Association; and Western Federal Savings and Loan Association, each of which is an association organized and operating as an instrumentality of the United States of America pursuant to Section 5(a) of the Home Owners' Loan Act of 1933, as amended [12 U.S.C. 1464(a)], Plaintiffs, vs. Richard T. Silberman, as Secretary of the Business and Transportation Agency of the State of California; and The Federal Home Loan Bank Board, Defendants.

Federal Home Loan Bank Board, Cross-Claimant, vs. Richard T. Silberman, as Secretary of the Business

and Transportations Agency of the State of California, Cross-Defendant. Civil No. S 78-55-PCW.

On May 1, 1978, hearings were held before the Honorable Philip C. Wilkins, Judge of the United States District Court for the Eastern District of California, on various Motions of the parties to the above entitled action and cross-action, namely:

A. The following Motions by plaintiffs:

1. Motion For Partial Summary Judgment on Behalf of Plaintiffs, [F.R.C.P. Rule 56], dated March 3, 1978;

2. Motion For Entry of Final Judgment, [F.R.C.P. Rule 54(b)], dated March 3, 1978.

B. The following Motions by defendant Richard T. Silberman:

1. Motions To Dismiss, Or In The Alternative, To Stay Action, dated March 13, 1978 and April 10, 1978;

2. Motion To Strike, dated March 13, 1978.

C. The Motion For Preliminary Injunction, dated March 17, 1978, by defendant Federal Home Loan Bank Board.

William F. McKenna, Esq. and Terry O. Kelly, Esq., of the law firm of McKenna & Fitting, appeared at such hearings on behalf of plaintiffs; W. Gary Kurtz, Esq. and Joseph M. O'Heron, Esq., Deputy Attorneys General of the Office of the Attorney General of the State of California, appeared thereat on behalf of the defendant and cross-defendant Richard T. Silberman, as Secretary of the Business and Transportation Agency of the State of California; and Harvey Simon, Esq., Assistant General Counsel of the Federal Home Loan Bank Board, appeared thereat on behalf of the

defendant and cross-claimant Federal Home Loan Bank Board.

As said hearings this Court heard oral argument by counsel and thereafter, and at the conclusion of said hearings, took the matters of such Motions under submission.

On May 9, 1978, this Court issued its written Statement of Intended Decision in which this Court granted the aforementioned Motions of plaintiffs and denied the aforementioned respective Motions of defendant and cross-defendant Richard T. Silberman and defendant and cross-claimant Federal Home Loan Bank Board.

In accordance with such Statement of Intended Decision and otherwise being fully advised in the premises, this Court now and hereby makes its Findings of Fact and Conclusions of Law in the premises as follows:

FINDINGS OF FACT

1. For purposes of these Findings of Fact and the following Conclusions of Law based thereon:

(a) "Conference" shall mean plaintiff Conference of Federal Savings and Loan Associations;

(b) "Plaintiff Federal associations" shall mean those Federal savings and loan associations hereinabove named as plaintiffs and those other Federal association members of the Conference which have their principal offices and operations within California and which are not hereinabove named as plaintiffs;

(c) "Secretary" shall mean the Secretary of the Business and Transportation Agency of California, who at the time of commencement of this action was defendant and cross-defendant Richard T. Silberman;

(d) "Bank Board" shall mean defendant and cross-claimant Federal Home Loan Bank Board;

(e) "HOLA" shall mean the Home Owners' Loan Act of 1933 as amended (12 U.S.C.A. 1461 et seq.);

(f) "The California anti-redlining statutes" shall mean Sections 35,800 through 35,833 of the California Health and Safety Code, also known and cited within California as "The Housing Financial Discrimination Act of 1977" (Chapter 1140, California Statutes of 1977).

2. The Conference sues defendants herein on behalf of itself as a trade association and for the benefit of its Federal association members having their principal offices and operations in California.

3. At all times relevant hereto, each of the plaintiff Federal associations was, and now is, (i) a Federally-chartered savings and loan association organized and existing under and pursuant to HOLA and the various regulations promulgated thereunder, and (ii) subject to the continuing supervision and directives of the Bank Board.

4. At all times relevant hereto, the Secretary had, and now has, (i) control and supervision of the California Department of Savings and Loans and of the formation and operation of California state-chartered savings and loan associations, and (ii) is charged with the responsibility for enforcing the California anti-redlining statutes.

5. At all times relevant hereto, the Bank Board was, and now is, (i) a Federal agency and instrumentality, and (ii) under Federal law, and specifically HOLA, exercising plenary supervisory and regulatory authority over the operation of Federally-chartered savings and loan associations.

6. The California anti-redlining statutes purport to regulate the non-discrimination in lending practices of both Federally-chartered and state-chartered savings and loan associations within California. Such statutes became effective on Janury 1, 1978.

7. In or about mid-December, 1977, the Secretary asserted to the plaintiff Federal associations, in writing, that they were required, from and after January 1, 1978, to comply with the provisions of the California anti-redlining statutes, including the posting at all their offices and the giving to all of their loan applicants of a certain "State of California Fair Lending Notice" (Exhibit "C" to the Complaint herein).

8. On or about February 2, 1978 the Bank Board issued its written Opinion that the California anti-redlining statutes are inapplicable to Federal savings and loan associations in California and that such Federal associations are not required to post or give such State of California Fair Lending Notices (Exhibit "B" to the Complaint herein).

9. On February 6, 1978, the plaintiffs commenced the within action for declaratory and injunctive relief.

10. On February 28, 1978, the Secretary commenced Civil Action No. 220012 (entitled "*People of the State of California; and Richard T. Silberman, etc. vs. West Coast Federal Savings and Loan Association, et al.*") in the Superior Court of the State of

California for the County of San Mateo against West Coast Federal Savings and Loan Association, a member of the Conference, to obtain declaratory and injunctive relief and civil penalties against West Coast Federal Savings and Loan Association for its alleged non-compliance with the California anti-redlining statutes.

11. A continuing, actual and bona fide controversy exists between the plaintiffs, the Secretary and the Bank Board concerning whether the Secretary has the power and authority to supervise and regulate, and to enforce supervision and regulation, of the non-discrimination in lending practices of the plaintiff Federal associations and further concerning whether the plaintiff Federal associations must comply with the California anti-redlining statutes and the promulgations of the Secretary made pursuant thereto.

12. An immediate declaration of the plaintiff Federal associations' respective rights and duties in the premises of the conflicting claims and contentions of law and of regulatory and supervisory authority being made by and between the Secretary and the Bank Board in respect to the non-discrimination in lending practices of plaintiff Federal associations is required in order to prevent substantial and continuing burden and uncertainty to the plaintiff Federal associations in the conduct of their respective businesses and, further to prevent interference with the Bank's Board regulation of non-discrimination in lending practices of the plaintiff Federal Association. There is no just reason for delay in entry, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, of a final declaratory judgment concerning the controversy described in Finding of Fact No. 11.

13. Any finding of fact herein which is actually a conclusion of law shall be deemed to be a conclusion of law.

CONCLUSIONS OF LAW

1. The controversy described in Finding of Fact No. 11 is one arising under HOLA. HOLA is an Act of Congress regulating commerce within the meaning of 28 U.S.C. §1337.

2. This Court has subject matter jurisdiction over the Complaint herein under 28 U.S.C. §3131 and 28 U.S.C. §1337.

3. This Court has both ancillary and independent jurisdiction over the Cross-claim herein under 28 U.S.C. §1331, 28 U.S.C. §1337 and 28 U.S.C. §1345. The Bank Board is authorized to prosecute its Cross-claim herein under Section 5(d)(1) of HOLA.

4. The Conference is a proper party plaintiff to this action and has standing to bring and prosecute this action on behalf of itself and for the benefit of its Federal association members having their principal offices and operations in California.

5. The plaintiffs are entitled to a declaratory judgment against the Secretary in respect to the controversy described in Finding of Fact No. 11.

6. The Bank Board's exercise of its plenary regulatory power granted by Congress under HOLA preempts legislation by the State of California which attempts to subject Federal savings and loan associations in California to state regulation and discipline in the area of anti-redlining practices. Such plenary regulatory power of the Bank Board is not limited by provisions of either the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*) or the Home Mortgage Disclosure Act of 1975 (12 U.S.C. §§2801-2809).

7. The Secretary has no power or authority to require or enforce compliance by the plaintiff Federal associations with the California anti-redlining statutes.

8. The plaintiff Federal associations are not required to post or give the State of California Fair Lending Notice attached as a part of Exhibit "C" to the Complaint herein.

9. In light of this Court's granting partial summary judgment to the plaintiffs in respect to the controversy described in Finding of Fact No. 11 and this Court's directing entry of a final judgment thereon pursuant to Rule 54(b), Federal Rules of Civil Procedure, the preliminary injunction requested by the Bank Board is unnecessary. However, this Court had, continues to have and hereby retains the equitable jurisdiction to grant such an injunction under the authority of *NLRB v. Nash-Finch*, 404 U.S. 138, 144 (1971). Such retention of equitable jurisdiction shall be in addition to the jurisdiction which the Court retains by operation of the law under 28 U.S.C. §2283.

10. Any conclusion of law herein which is actually a finding of fact shall be deemed to be a finding of fact.

11. Let final judgment in favor of the plaintiffs and against the Secretary be entered in accordance herewith and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DATED: August 16, 1978.

UNITED STATES DISTRICT JUDGE

United States Constitution, Article 6, cl. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

California Housing Financial Discrimination Act of 1977 (Cal. Health & Safety Code § 35800-35854).

CHAPTER 1. FINDINGS AND DECLARATIONS OF PURPOSE AND POLICY.

§35800. Short title

This part shall be known and may be cited as The Housing Financial Discrimination Act of 1977.

§ 35801. Legislative findings and declarations

The Legislature finds and declares:

(a) The subject of housing is of vital statewide importance to the health, safety, and welfare of the residents of the state.

(b) A healthy housing market, where residents of this state have a choice of housing opportunities and where the housing consumer may effectually choose within a free market place, is necessary to achieve a healthy state economy.

(c) The equities that California residents accumulate in family homes must be protected and conserved.

(d) The Legislature has the responsibility to direct the discontinuance of injurious practices.

(e) With respect to certain geographic areas, financial institutions have sometimes denied financial assistance or approved assistance on terms less favorable than are usually offered in other geographic areas, regardless of the creditworthiness of the applicant or the condition of the real-property security offered, and this practice has the following effects:

(1) Contributes to the decline of available family housing in such areas and is likely to continue to do so.

(2) Limits the choice of housing opportunities and inhibits the operation of a healthy housing market in such areas.

(3) Leads to the abandonment of such areas.

(4) Adversely affects the health, welfare, and safety of the residents of this state.

(5) Undermines the value of the equity of current owners of property in such areas.

(6) Inhibits the granting of amortized loans.

(7) Perpetuates racially and economically segregated neighborhoods and geographic areas.

(f) The practice of denying mortgage loans or adversely varying the terms of such loans because of conditions, characteristics, or trends in a neighborhood or geographic area that are unrelated to the creditworthiness of the applicant or the value of the real property security offered is against public policy.

§ 35802. Purposes of Part

The purposes of this part include the following:

(a) To prevent discrimination in the provision of financial assistance for financing or refinancing the purchase, construction, rehabilitation, or improvement of housing accommodations because of conditions, characteristics, or trends in the neighborhood or geographic area surrounding the security property.

(b) To encourage increased lending in neighborhoods or geographic areas in which conventional residential mortgage financing has been unavailable.

(c) To increase the availability of housing accommodations to creditworthy persons.

(d) To ensure the supply of decent, safe housing.

(e) To prevent the abandonment and decay of neighborhoods and geographic areas.

§35803 Police power

This part shall be deemed an exercise of the police power of the state for the protection of the health, welfare, and peace of the people of this state.

CHAPTER 2. DEFINITIONS.

§35805. Definitions

As used in this part:

(a) "Agency" means the Business and Transportation Agency.

(b) "Fair market value" means the highest price which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, acting prudently and knowledgeably.

(c) "Financial institution" includes any bank, savings and loan association, or other institution in this state, including a public agency, that regularly makes, arranges, or purchases loans for the purchase, construction, rehabilitation, improvement, or refinancing of housing accommodations.

(d) "Housing accommodation" includes any improved or unimproved real property, or portion thereof, that (1) is used or is intended to be used as a residence, and (2) is or will be occupied by the owner, and (3) contains not more than four dwelling units. "Housing accommodation" shall also include any residential dwelling containing not more than four dwelling units where the owner thereof, whether or not the owner will occupy the property, applies or has applied for a secured home improvement loan from a financial institution, the proceeds of which loan will be used to improve the security property.

(e) "Secretary" means the Secretary of the Business and Transportation Agency.

CHAPTER 3. PROHIBITIONS AND ENFORCEMENT

§ 35810. Neighborhood or geographic area

No financial institution shall discriminate in the availability of, or in the provision of, financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing housing accommodations due, in whole or in part, to the geographic area surrounding the housing accommodation, unless the financial institution can demonstrate that such consideration in the particular case is required to avoid an unsafe and unsound business practice.

§ 35811. Race, color, religion, sex, marital status, national origin or ancestry

No financial institution shall discriminate in the availability of, or in the provision of, financial assistance for the purpose of purchasing, constructing, rehabilitating, improving or refinancing housing accommodations due, in whole or in part, to the consideration of race, color, religion, sex, marital status, national origin, or ancestry.

§ 35812. Neighborhood or geographic area; racial, ethnic, religious or national origin composition

No financial institution shall consider the racial, ethnic, religious, or national origin composition of a neighborhood or geographic area surrounding a housing accommodation or whether or not such composition is undergoing change, or is expected to undergo change, in appraising a housing accommodation or in determining whether or not, and under what terms and conditions, to provide financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing a housing accommodation. No financial institution shall utilize appraisal practices that are inconsistent with the provisions of this part.

§ 35813. Health or safety of occupancy; fair market value of property

Nothing in this part shall (1) require a financial institution to provide financial assistance if it is clearly evident that occupancy of the housing accommodation would create an imminent threat to the health or safety of the occupant, or (2) be construed to preclude a financial institution from considering the fair market value of the property which will secure the proposed loan.

§ 35814. Rules and regulation; guidelines and orders; delegation of responsibilities

The secretary shall issue such rules, regulations, guidelines, and orders as are necessary to interpret and enforce the provisions of this part and to affirmatively further the provisions of this part. The secretary may delegate the responsibilities imposed by this section to one or more departments within the agency that license persons or organizations engaged in a business related to, or affecting compliance with, this part.

§ 35815. Lending patterns and practices; compliance with Part; monitoring and investigation; actions on violations; remedies

The secretary or the secretary's designee shall monitor and investigate the lending patterns and practices of financial institutions for compliance with this part, including the lending patterns and practices for housing accommodations which are not occupied by the owner. If a finding is made that such patterns or practices violate the provisions of this part the secretary or

the secretary's designee shall take such action as will effectuate the purposes of this part. In addition to other remedies provided by this part or other provisions of law, the secretary may recommend to the State Treasurer that state funds not be deposited in a financial institution where the secretary has made a finding that such financial institution has engaged in a lending pattern and practice which violates the provisions of this part.

CHAPTER 4. COMPLAINT RESOLUTION

§ 35820. Filing of complaint

Any applicant for a real estate loan in connection with a housing accommodation claimed to be aggrieved by an alleged violation of Chapter 3 (commencing with Section 35810) of this part, or any rule or regulation adopted thereunder, may file a complaint with the secretary.

§ 35821. Conference; conciliation; persuasion

Immediately upon receipt of the complaint, the secretary shall endeavor to eliminate any alleged unlawful practice by conference, conciliation, or persuasion.

§ 35822. Decisions; findings; service; order to cease and desist; financial assistance or damages; report of compliance

If, in accordance with procedures established for the resolution of complaints by the secretary, and within 30 days of receiving the complaint, the secretary finds that a financial institution has engaged in any unlawful practice as defined in this part, the secretary shall state in a written decision his or her findings of fact and shall cause such financial institution to be served with a copy of the decision and an order issued by the secretary requiring it to cease and desist from

such practice and to take one of the following steps as, in the judgment of the secretary, will effectuate the purposes of this part:

(a) The making of the financial assistance or the making of the financial assistance on nondiscriminatory terms; or

(b) The payment of damages to the complainant in an amount not to exceed one thousand dollars ($1,000), if the secretary finds that effective relief under subdivision (a) is no longer available.

The secretary may require a report of the manner of compliance.

If the secretary finds that a financial institution has not engaged in any practice which constitutes a violation of this part, the secretary shall issue a written decision incorporating his findings of fact and shall cause to be served upon the complainant and the financial institution involved a copy of the decision.

§ 35823. Finality of decisions; administrative hearings; representation of complainant; judicial review; costs and attorney fees

The decision of the secretary shall be final unless, within ten days from the date of receipt thereof, the complainant or financial institution files a written request with the secretary for a formal administrative hearing. Upon receipt of such a written request, the secretary shall file a copy thereof with the Office of Administrative Hearings. Within 20 days of receipt of the copy of such request, the Office of Administrative Hearings shall commence a hearing on the merits pursuant to the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code,

except that the decision of the hearing officer shall be a final decision and binding upon the secretary. The decision shall be in accordance with the provisions of Section 35822 and shall be rendered within 45 days of receipt of a copy of the request for a hearing by the Office of Administrative Hearings. The secretary shall represent the complainant at such hearing if the secretary's decision rendered pursuant to Section 35822 was in favor of the complainant.

Judicial review may be obtained by the complainant or the financial institution by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure. In any such judicial proceeding, the court may exercise its independent judgment on the evidence included in the record of the administrative hearing and may additionally consider evidence which was improperly excluded by the hearing officer and any other relevant evidence not included in the record of the administrative hearing which the court finds the offering party could not, in the exercise of reasonable diligence, have produced at the administrative hearing. The court may in its discretion award costs or reasonable attorney fees, or both, to the complainant if the complainant is the prevailing party, without regard to whether such judicial action is brought by the complainant or by the financial institution.

CHAPTER 5. MISCELLANEOUS

§ 35830. Notice to applicants of rights; contents; posting

In order to further the purposes of this part, financial institutions shall notify all applicants at the time of written application for financial assistance of the prohibitions enumerated in Chapter 3 (commencing

with Section 35810) and of the right of review provided by Section 35820. Such notice shall include the address of the secretary, or the secretary's designee, and where complaints may be filed and questions may be asked. Such notice shall be in at least 10-point type and shall also be posted in a conspicuous place for public inspection.

§ 35831. Law governing; rules and regulations; guidelines and orders

The provisions of this part, including rules, regulations, guidelines, and orders issued pursuant to this part, shall not affect the validity of any prohibitions or requirements pertaining to the activity of financial institutions that arise from other provisions of law relating to discrimination in lending. Rules, regulations, guidelines, and orders issued pursuant to this part shall not be in any manner contrary to, or inconsistent with, the purpose of this part.

§ 35832. Liberal construction

The provisions of this part shall be liberally construed in order to effectuate the purposes of this part.

§ 35833. Severability

If any clause, sentence, paragraph, or part of this part or application thereof to any person, financial institution, or circumstance shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this part and the application thereof to other persons, financial institutions or circumstances but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, financial institution. or circumstance involved.

§ 35854. Inoperative

42 U.S.C. §§ 3610, 3615 (Fair Housing Provisions of the Civil Rights Act of 1968 or "Title VIII")

§ 3610 Enforcement.

(a) Person aggrieved; complaint; copy; investigation; informal proceedings; violations of secrecy; penalties.

Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Complaint; limitations; answer; amendments; verification.

A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary.

Wherever a State of local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carried forward such proceedings with reasonable promptness. In no event shall the Secre-

tary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

(d) Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders.

If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided,* That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) Burden of proof.

In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Trial of action; termination of voluntary compliance efforts.

Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance

§ 3615. Effect on State laws.

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, gruarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid. (Pub. L. 90-284, title VIII, § 815, Apr. 11, 1968, 82 Stat. 89.)

15 U.S.C. §§ 1691(e)-(g) (Equal Credit Opportunity Act or "ECOA").

Election of remedies under subchapter or State law; nature of relief determining applicability

(e) Where the same act or omission constitutes a violation of this subchapter and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this subchapter or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

Compliance with inconsistent State laws; determination of inconsistency

(f) This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter, from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this subchapter if the Board determines that such law gives greater protection to the applicant.

Exemption by regulation of credit transactions covered by State law; failure to comply with State law

(g) The Board shall by regulation exempt from the requirements of sections 1691 and 1691a of this title any class of credit transactions within any State

if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this subchapter for the purposes of section 1691e of this title.

12 U.S.C. §§ 1461-1470 (Home Owners' Loan Act of 1933 or "HOLA").

§ 1461. Short title.

This chapter may be cited as the "Home Owners' Loan Act of 1933."

§ 1462. Definitions.

As used in this chapter—

(a) The term "Board" means the Federal Home Loan Bank Board.

(b), (c). Omitted.

(d) The term "association" means a Federal Savings and Loan Association chartered by the Board as provided in section 1464 of this title.

§ 1463. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

§ 1463a. Bonds issued under original provisions; interest and principal.

§ 1463b. Repealed. May 28, 1935, ch. 150, § 17 (b), 49 Stat. 297.

§ 1464. Federal Savings and Loan Associations.

(a) Organization authorized.

In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

(b) Capital; members of the association; voting rights; payment of savings accounts and withdrawals; nontransferable orders or authorizations: authorization to borrow, give security, and issue notes, bonds, debentures, or other obligations.

(1) An association may raise capital in the form of such savings deposits, shares, or other accounts, for fixed, minimum, or indefinite periods of time (all of which are referred to in this section as savings accounts and all of which shall have the same priority upon liquidation) as are authorized by its charter or by regulations of the Board, and may issue such passbooks, time certificates of deposit, or other evidence of savings accounts as are so authorized. Holders of savings accounts and obligors of an association shall, to such extent as may be provided by its charter or by regulations of the Board, be members of the association, and shall have such voting rights and such other rights as are thereby provided. Except as may be otherwise authorized by the association's charter or regulation of the Board in the case of savings accounts for fixed or minimum terms of not less than thirty days, the payment of any savings account shall be subject to the right of the association to require such advance notice, not less than thirty days, as shall be provided for by the charter of the association or the regulations of the Board. The payment of withdrawals from savings accounts in the event an association does not pay all withdrawals in full (subject to the right of the association to require notice) shall be subject to such rules and procedures as may be prescribed by the association's charter or by regulation of the Board, but any association which, except as

authorized in writing by the Board, fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition to transact business within the meaning of subsection (d) of this section. Savings accounts shall not be subject to check or to withdrawal or transfer on negotiable or transferable order or authorization to the association, but the Board may by regulation provide for withdrawal or transfer of savings accounts upon nontransferable order or authorization.

(2) To such extent as the Board may authorize by regulation or advice in writing, an association may borrow, may give security, and may issue such notes, bonds, debentures, or other obligations, or other securities (except capital stock) as the Board may so authorize.

(c) Loans; security required; investment of assets.

Such associations shall lend their funds only on the security of their savings accounts or on the security of first liens upon real property within one hundred miles of their home office or within the State in which such home office is located which constitute first liens upon homes, combinations of homes and business property, other dwelling units, or combinations of dwelling units, including homes, and business property involving only minor or incidental business use (all of which may be defined by the Board); *Provided,* That not more than $45,000 for each single-family dwelling, and not more than such amount per room as the Board may determine by regulation within the limits allowable (at the time of the loan) in section 1713(c)(3) of this title for any other dwelling unit covered by such lien, shall be loaned on the security of any

such lien, and the Board shall by regulation limit to not more than 20 per centum of the assets of the association the aggregate amount or amounts of the investments which may be made by an association under the foregoing provisions of this sentence on the security of property which comprises or includes more than four dwelling units or does not constitute homes or combinations of homes and business property; except that not exceeding 20 per centum of the assets of such association may be loaned on the security of first liens upon improved real estate without regard to the foregoing limitations, and additional sums not exceeding 20 per centum of the assets of an association may be used without regard to such area restriction for the making or purchase of participating interests in first liens on real property of the type described in this sentence in the matter preceding this proviso: *And provided further,* That any portion of the assets of such associations may be invested in obligations of, or fully guaranteed as to principal and interest by, the United States, or in the stock or bonds of a Federal Home Loan Bank, or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association, or any other agency of the United States, or the stock of the Federal National Mortgage Association; or in time deposits, certificates, or accounts of any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; or in general obligations of any State or of any political subdivision thereof; and as used in this section the term "State" shall include the District of Columbia, the Commonwealth of Puerto

Rico, and the possessions of the United States: *And provided further,* That any such association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter. In addition to the loans and investments otherwise authorized, such associations may purchase, subject to all the provisions of this paragraph except the area restriction, loans secured by first liens on improved real estate which are insured under the provisions of the National Housing Act, as amended, or insured as provided in the Servicemen's Readjustment Act of 1944, as amended, or chapter 37 of Title 38. Structures or parts thereof designed or used as fraternity or sorority houses which include sleeping accommodations for students of a college or university, or designed or used principally for the provision of living accommodations for persons who are students, employees, or members of the staff of a college, university, or hospital, shall be considered, subject to such regulations as the Board may prescribe, "other dwelling units" for the purposes of this subsection.

Without regard to any other provision of this subsection except the area requirement, any such association is authorized to invest a sum not in excess of 20 per centum of the assets of such association in loans insured under subchapter I of chapter 13 of this title, in home improvement loans insured under subchapter II of chapter 13 of this title, in unsecured loans insured or guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as amended, or chapter 37 of Title 38, and in other loans for property alteration, repair, or improvement, including the construction of new structures related to residen-

tial use of the property: *Provided,* That no such loan, unless so insured or guaranteed, shall be made in excess of $5,000. Participating interests in loans secured by mortgages which have the benefit of insurance or guaranty (or a commitment therefor) under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of Title 38 shall not be taken into account in determining the amount of loans which an association may make within any of the percentage limitations contained in the first proviso of this subsection.

Without regard to any other provision of this subsection, but subject to such prohibitions, limitations, and conditions as the Board may by regulation prescribe, any such association may make and invest in—

(A) any loan not exceeding $5,000 made for the repair, equipping, alteration, or improvement of any real property, or

(B) any loan made for the purpose of mobile home financing.

Without regard to any other provision of this subsection, any such association is authorized to invest in loans, obligations, and advances of credit (all of which are hereinafter referred to as "loans") made for the payment of expenses of college, university, or vocational education, but no association shall make any investment in loans under this paragraph if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed 5 per centum of its assets.

Without regard to any other provision of this subsection except the area restriction, any such association

whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest an amount not exceeding at any one time 5 per centum of such withdrawable accounts in loans to finance the acquisition and development of land for primarily residential usage, subject to such rules and regulations as the Board may prescribe.

Without regard to any other provision of this subsection except the area restriction and the dollar amount limitation, any such association may invest an amount not exceeding at any one time 5 per centum of its assets in nonamortized loans which are made on the security of first liens upon homes or combinations of homes and business property and which (1) are repayable within a period of eighteen months, (2) provide that interest payments be made at least semiannually, and (3) do not exceed 80 per centum of the appraised value of the property involved. For the purposes of this paragraph the term "first liens" include the assignment of the whole of the beneficial interest in a trust having a corporate trustee whereunder real estate held in the trust can be subjected to the satisfaction of the obligation or obligations secured with the same priority as a first mortgage, a first deed of trust, or a first trust deed in the jurisdiction where the real estate is located.

Without regard to any other provision of this subsection except the area restriction, any such association is authorized to invest an amount not exceeding at any one time 5 per centum of its assets in amortized loans or participating interests therein which are secured by first liens upon improved real estate used to provide

housing facilities for the aging, subject to the following qualifications:

(1) each such loan shall be repayable within a period of 30 years;

(2) no such loan shall exceed 90 per centum of the appraised value of the improved real estate given as security therefor; and

(3) each such loan—

(A) shall be made upon and secured by real estate which is improved by housing accommodations, individual or multiple, designed for the purpose of providing accommodations for occupancy by aging persons, or of providing rest homes or nursing homes, so constructed or altered as to be suitable primarily for the occupancy of persons over fifty-five years of age and limited principally to the occupancy of such persons; and

(B) shall be made for the implementation of the purpose described in clause (A).

Without regard to any other provision of this subsection, any such association is authorized to invest not more than 5 per centum of its assets in, or in interests in, real property located within urban renewal areas as defined in subsection (a) of section 1460 of Title 42 and obligations secured by first liens on real property so located, but no investment shall be made by an association under this sentence in real property or any interest therein if the aggregate investment of the association under this sentence in real property and interests therein, determined as prescribed by the Board, would thereupon exceed 2 per centum of the assets of the association.

Without regard to any other provisions of this subsection, any such association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, to lend to, or to commit itself to lend to any business development credit corporation incorporated in the State in which the head office of such association is situated, in the same manner and to the same extent as the statutes of such State authorize a savings and loan association organized under the laws of said State to invest in, to lend to, or to commit itself to lend to such business development credit corporation, but the aggregate amount of such investments, loans, and commitments of any such association outstanding at any time shall not exceed one-half of 1 percentum of the total outstanding loans made by such association, or $250,000, whichever is the lesser.

For the purpose of this section the terms "real property" and "real estate" shall include a leasehold or subleasehold estate in real property under a lease or sublease the term of which does not expire, or which is renewable automatically or at the option of the holder (or at the option of the association) so as not to expire, for at least ten years beyond the maturity of the debt.

Any such association is authorized to invest in the capital stock, obligations, or other securities of any corporation organized under the laws of the State, District, Commonwealth, territory, or possession in which the home office of the association is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations of that State, District, Commonwealth, territory, or

possession and by Federal savings and loan associations having their home offices therein, but no association may make any investment under this sentence if its aggregate outstanding investment under this sentence, determined as prescribed by the Board, would thereupon exceed 1 per centum of its assets.

Without regard to any other provision of this subsection, any such association may, to such extent as the Federal Home Loan Bank Board may by regulation permit, (1) invest in loans, and interests in loans, secured by mortgages as to which the association has the benefit of insurance under subchapter IX-A of chapter 13 of this title, now or hereafter in effect, or of a commitment or agreement for such insurance, or (2) acquire and hold investments in housing project loans, or interests therein, having the benefit of any guaranty under section 2181 of Title 22, as now or hereafter in effect, or loans, or interests therein, having the benefit of any guaranty under section 2184 of Title 22, or any commitment or agreement with respect to such loans, or interests therein, made pursuant to either of such sections. This authority extends to the acquisition, holding, and disposition of loans, or interests therein, having the benefit of any guaranty under section 2181 or 2182 of Title 22 or such sections as hereinafter amended or extended, or of any commitment or agreement for any such guaranty. Investments under clause (1) of this paragraph shall not be included in any percentage of assets or other percentage referred to in this subsection. Investments under clause (2) of this paragraph shall not exceed, in the case of any association, 1 per centum of the assets of such association. Without regard to any other provision of this subsection, an association may invest in loans or

obligations, or interests therein, as to which the association has the benefit of any guaranty under title IV of the Housing and Urban Development Act of 1968 or under part B of the Urban Growth and New Community Development Act of 1970, as now or hereafter in effect, or of a commitment or agreement therefor, and such investments shall not be included in any percentage of assets or other percentage referred to in this subsection.

Notwithstanding any other provision of this subsection, an association may invest in loans or obligations, or interests therein, as to which the association has the benefit of insurance under section 1715z-5 of this title, or of a commitment or agreement therefor, and such investments shall not be included in any percentage of assets or other percentage referred to in this subsection.

Any such association may invest in loans, or interests in loans, to financial institutions with respect to which the United States or any agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the Securities and Exchange Commission, secured by loans, obligations, or investments in which it has any statutory authority to invest directly.

No building and loan association incorporated under the laws of the District of Columbia or organized in such District or doing business in such District shall establish any branch or move its principal office or any branch without the prior written approval of the Federal Home Loan Bank Board, and no other building and loan association shall establish any branch in such District or move its principal office or any branch in such District without such approval. As used

in the sentence next preceding, "branch" means any office, place of business, or facility, other than the principal office as defined by the Board, of a building and loan association at which accounts are opened or payments thereon are received or withdrawals therefrom are paid, or any other office, place of business, or facility of a building and loan association defined by the Board as a branch within the meaning of such sentence, and as used in such sentence and in this sentence "building and loan association" means any incorporated or unincorporated building, building or loan, building and loan, savings and loan, or homestead association or cooperative bank.

Any such association may invest in any investment which, at the time of the making of the investment, is an asset eligible for inclusion toward the satisfaction of any liquidity requirement imposed on the association pursuant to section 1425a of this title, but only to the extent that the investment is permitted to be so included under regulations issued by the Board pursuant to that section, or is otherwise authorized.

Any such association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of Title 26, if the funds of such trust are invested only in savings accounts or deposits in such association or in obligations or securities issued by such association. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper

detail all transactions engaged in under the authority of this paragraph.

Any such association may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title.

Without regard to any other provision of this subsection, any such association is authorized to invest in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and is authorized to invest in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act.

(d) Proceedings to enforce compliance with law and regulations; cease and desist proceedings; temporary cease-and-desist orders; suspension or removal of directors or officers; appointment and removal of conservator or receiver; hearings and judicial review; regulations for reorganization, dissolutions, etc.; penalties; definitions; application to other institutions.

(1) The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, or in any other action, suit, or proceeding to which it is a party or in which it is interested, and in the administration of conservatorships and receiverships, the Board is authorized to act in its own name and through its own attorneys. Except as otherwise provided herein, the Board shall be subject to suit (other than suits on claims for money damages) by any Federal savings and loan association or director

or officer thereof with respect to any matter under this section or any other applicable law, or rules or regulations thereunder, in the United States district court for the judicial district in which the home office of the association is located, or in the United States District Court for the District of Columbia, and the Board may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

(2)(A) If, in the opinion of the Board, an association is violating or has violated, or the Board has reasonable cause to believe that the association is about to violate, a law, rule, regulation, or charter or other condition imposed in writing by the Board in connection with the granting of any application or other request by the association, or written agreement entered into with the Board, or is engaging or has engaged, or the Board has reasonable cause to believe that the association is about to engage, in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of the association. Unless the association shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any

such hearing the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(3)(A) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the association pursuant to paragraph (2)(A) of this subsection, or the continuation thereof, is likely to cause insolvency (as defined in paragraph (6)(A)(i) of this subsection) or substantial dissipation of assets or earnings of the association, or is likely to otherwise seriously prejudice the interests of its savings account holders, the Board may issue a temporary order requiring the association to cease and desist from any such violation or practice. Such order shall become effective upon service upon the association and, unless set aside, limited, or suspended

by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued against the association, until the effective date of any such order.

(B) Within ten days after the association concerned has been served with a temporary cease-and-desist order, the association may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the association under paragraph (2)(A) of this subsection, and such court shall have jurisdiction to issue such injunction.

(C) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(4)(A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged

or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Board may serve upon such director or officer a written notice of its intention to remove him from office.

(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such association.

(C) In respect to any director or officer of an association or any other person referred to in subparagraph (A) or (B) of this paragraph, the Board may, if it deems it necessary for the protection of the association or the interests of its savings account holders, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subparagraph (E) of this paragraph, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subparagraph (A) or (B) of this paragraph and until such time as the Board shall dismiss the charges in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the association of which he is a director or officer or in the conduct of whose affairs he has participated.

(D) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an association, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (i) such director, officer, or other person, and for good cause shown,

or (ii) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice has been established, the Board may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the association, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such association and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(E) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an association under subparagraph (C) of this paragraph, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subparagraph (A) or (B) of this paragraph,

and such court shall have jurisdiction to stay such suspension and/or prohibition.

(5)(A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information, indictment, or complaint authorized by a United States Attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Board may by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the association except with the consent of the Board. A copy of such order shall be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office and/or prohibit further participation in association affairs, pursuant to subparagraph (A) or (B) of paragraph (4) of this subsection.

(B) If at any time, because of the suspension of one or more directors pursuant to this subsection (d), there shall be on the board of directors of an association less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board and not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an association are suspended pursuant to this subsection (d), the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the association and their respective successors take office.

(6)(A) The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following: (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members; (ii) substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices; (iii) an unsafe or unsound conditions to transact business; (iv) willful violation of a cease-and-desist order which has become final; (v) concealment of books, papers, records, or assets of the association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Board. The Board shall have exclusive power and jurisdiction to appoint a conservator or receiver. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as

herein provided exists, the Board is authorized to appoint ex parte and without notice a conservator or receiver for the association. In the event of such appointment, the association may, within thirty days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Board to remove such conservator or receiver. Such proceedings shall be given precedence over other cases pending in such courts, and shall be in every way expedited. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(B) In addition to the foregoing provisions, the Board may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for an association in the event that (i) the association, by resolution of its board of directors or of its members, consents to such appointment, or (ii) the association is removed from membership in any Federal home loan bank, or its status as an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation is terminated.

(C) Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the

exercise of powers or functions of a conservator or receiver.

(D) A conservator shall have all the powers of the members, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for an association, and said Corporation shall have power to buy at its own sale as receiver, subject to approval by the Board. The Board may, without any requirement of notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but any such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this paragraph (6) shall be removal of the conservator or receiver in office at the time of such removal.

(7)(A) Any hearing provided for in this subsection (d) shall be held in the Federal judicial district or in the territory in which the home office of the association is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of Title 5. Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, the Board shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and

cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this subsection. Judicial review of any such order shall be exclusively as provided in this paragraph (7). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (B) of this paragraph, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

(B) Any party to the proceeding, or any person required by an order issued under this subsection to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to subparagraph (A) of this paragraph (other than an order issued with the consent of the association or the director or officer or other person concerned, or an order issued under paragraph (5)(A) of this subsection), by filing in the court of appeals of the United States for the circuit in which the home office of the association is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition, such

court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (A) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of Title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court, upon certiorari as provided in section 1254 of Title 28.

(C) The commencement of proceedings for judicial review under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

(8) The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and outstanding notice or order issued by the Board under this subsection (d), and such courts shall have jurisdiction and power to order and require compliance therewith, but except as otherwise provided in this subsection no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this subsection, or to review, modify, suspend, terminate, or set aside any such notice or order. Any court having jurisdiction of any proceeding instituted under this subsection by an association or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the association or from its assets.

(9) In the course of or in connection with any proceeding under this subsection, the Board or any member thereof or a designated representative of the Board, including any person designated to conduct any hearing under this subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Board is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this subsection may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this paragraph shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with this subsection shall be considered as nonadministrative expenses.

(10) Any service required or authorized to be made by the Board under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

(11) The Board shall have power to make rules and regulations for the reorganization, consolidation, liquidation, and dissolution of associations, for the merger of associations with other institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, for associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships; and the Board may, by regulation or otherwise, provide for the exercise of functions by members, directors, or officers of an association during conservatorship and receivership.

(12)(A) Any director or officer, or former director or officer, of an association, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under paragraph (4)(C), (4)(D), or (5)(A) of this subsection, and who (i) participates in any manner in the conduct of the affairs of such association, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect of any voting rights in such association, or (ii) without the prior written approval of the Board, votes for a director or serves or acts as a director, officer, or employee of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(B) Except with the prior written consent of the Board, no person shall serve as a director, officer, or employee of an association who has been convicted, or who is hereafter convicted, of a criminal offense

involving dishonesty or a breach of trust. For each willful violation of this prohibition, the association involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover by suit or otherwise for its own use.

(C) Whenever a conservator or receiver appointed by the Board demands possession of the property, business, and assets of any association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both.

(13)(A) As used in this subsection—

(1) The terms "cease-and-desist order which has become final" and "order which has become final" mean a cease-and-desist order, or an order, issued by the Board with the consent of the association or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (7)(B) of this subsection, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (5)(A) of this subsection.

(2) The term "State" includes the Commonwealth of Puerto Rico.

(3) The term "territory" includes any possession of the United States and any place subject to the jurisdiction of the United States.

(4) The terms "district", "district court", "district court of the United States", and "judicial district" shall have the meanings defined in section 451 of Title 28.

(B) As used in paragraph (4) of this subsection, the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(14) As used in this subsection, the terms "Federal savings and loan association" and "association" shall include any institution with respect to which the Federal Home Loan Bank Board now or hereafter has any statutory power of examination or supervision under any Act or joint resolution of Congress other than this chapter, the Federal Home Loan Bank Act, and the National Housing Act. For the purposes of this paragraph (14), references in this subsection to directors, officers, employees, and agents, or to former directors or officers, of associations shall be deemed to be references respectively to directors, officers, employees, and agents, or to former directors or officers, of such institutions, references therein to savings account holders and to members of associations shall be deemed to be references to holders of withdrawable accounts in such institutions, and references therein to boards of directors of associations shall be deemed to be references to boards of directors or other governing boards of such institutions. Said Board shall have power by regulation to define, for purposes of this paragraph (14), terms used or referred to in the sentence next preceding and other terms used in this subsection.

(e) Qualifications of incorporators; selection of localities for establishment.

No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

(f) Associations as members of Federal Home Loan Bank.

Each such association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

(g) Subscription to preferred stock by United States; retirement.

The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one

association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when called there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one-third of the receipts from its investing and borrowing shareholders to be used for the purpose of such retirement. In case of the liquidation of any such association the shares held by the Secretary of the Treasury shall be retired at par before any payments are made to other shareholders.

(h) Exemptions from taxation.

No State, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(i) Conversion of member of Federal Home Loan Bank into Federal Savings and Loan Association; conversion of Federal Savings and Loan Association into State-chartered institution.

Any member of a Federal Home Loan Bank may convert itself into a Federal savings and loan association under this chapter upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this chapter.

Any Federal savings and loan association may convert itself into a savings and loan type of institution organized pursuant to the laws of the State, District, or Territory (hereinafter referred to in this section as the State) in which the principal office of such Federal association is located: *Provided,* (1) That the State permits the conversion of any savings and loan type of institution of such State into a Federal savings and loan association; (2) that such conversion of a Federal savings and loan association into such a State institution is determined upon the vote in favor of

such conversion cast in person or by proxy at a special meeting of members called to consider such action, specified by the law of the State in which the home office of the Federal association is located, as required by such law for a State-chartered institution to convert itself into a Federal association, but in no event upon a vote of less than 51 per centum of all the votes cast at such meeting, and upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal association; (3) that notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof, and such notice shall be mailed, postage prepaid, at least twenty and not more than thirty days prior to the date of the meeting, to each member of record of the Federal association at his last address as shown on the books of the Federal association and to the General Manager of the Federal Savings and Loan Insurance Corporation, Washington, District of Columbia; (4) that, upon the effective date of the conversion, the association has repurchased the total amount invested in its shares by the Secretary of the Treasury; and (5) that if, upon the effective date of conversion, the Home Owners' Loan Corporation will hold of record shares of the association, its approval of the conversion has been obtained; (6) that, in the event of dissolution after conversion, the members or shareholders of the association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits; (7) that such conversion shall be effective

upon the date that all the provisions of this chapter shall have been fully complied with and upon the issuance of a new charter by the State wherein the association is located; it being provided that its act of converting into a State-chartered institution shall constitute an agreement to be bound by all the requirements that the Federal Savings and Loan Insurance Corporation may legally impose under section 1726 of this title, and the association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Federal Savings and Loan Insurance Corporation for issuance by similar insured institutions in such State, District, or Territory.

In addition to the foregoing provision for conversion upon a vote of the members only any association chartered as a Federal savings and loan association, including any having outstanding shares held by the Secretary of the Treasury or Home Owners' Loan Corporation, may convert itself into a State institution upon an equitable basis, subject to approval, by regulations or otherwise, by the Federal Home Loan Bank Board and by the Federal Savings and Loan Insurance Corporation: *Provided,* That if the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

(j) Subscription to full-paid income shares by United States.

In addition to the authority to subscribe for preferred shares in Federal savings and loan associations, the Secretary of the Treasury is authorized on behalf of the United States to subscribe for any amount of full

paid income shares in such associations, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds appropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and said subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations.

(k) Federal savings and loan associations or Federal Home Loan Banks as fiscal agents of United States.

When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.

§ 1465. Encouragement of saving and home financing.

To enable the Board to encourage local thrift and local home financing and to promote, organize, and develop the associations herein provided for or similar associations organized under local laws, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $150,000, to be immediately available and remain available until expended, subject to the call of the Board, which sum, or so much thereof as may be necessary, the Board is authorized to use in its discretion for the accomplishment of the purposes of this section without regard to the provisions of any other law governing the expenditure of public funds. For the purposes of this section the Secretary of the Treasury is authorized and directed to allocate and make immediately available to the Board, out of the funds appropriated pursuant to section 1464 (g) of this title, the sum of $700,000. Such sum shall be in addition

to the funds appropriated pursuant to this section, and shall be subject to the call of the Board and shall remain available until expended. The sums appropriated and made available pursuant to this section shall be used impartially in the promotion and development of local thrift and home-financing institutions, whether State or Federally chartered.

§ 1466. Territorial application.

The provisions of this chapter shall apply to the continental United States (including Alaska), to the State of Hawaii, and to Puerto Rico, Guam and the Virgin Islands.

§ 1466a. District of Columbia Savings and Loan Associations.

(a) Powers and functions of Board as to examination, operation, and regulation; enforcement provisions.

Without regard to any provision of law other than this section, and without limitation on any other power or function now or hereafter vested in or exercisable by the Federal Home Loan Bank Board by or under this chapter or otherwise, the Board shall, with respect to all incorporated or unincorporated building, building or loan, building and loan or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings and loan associations), have the same powers and functions as to examination, operation, and regulation as are now or hereafter vested in or exercisable by it with respect to Federal savings and loan associations by or under section 1464 of this title or otherwise, and all of the provisions of subsection

(d) of section 1464 of this title as now or hereafter in force shall be applicable with respect to such associations, or institutions.

(b) Statutory authorities.

Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is from time to time vested in Federal savings and loan associations.

(c) Amendment of organic documents; voting.

Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, hereafter be amended in such manner and to such extent and upon such vote or votes if any as the Federal Home Loan Bank Board may by regulation or otherwise provide.

(d) Conversion into Federal Savings and Loan Associations; same regulations for District and Federal Associations.

Nothing herein shall cause, or permit the Federal Home Loan Bank Board to cause, District of Columbia associations to be or become Federal savings and loan associations, or require the Board to impose on District of Columbia associations the same regulations as are imposed on Federal savings and loan associations.

§ 1468. Separability clause.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of

such provision to other persons or circumstances, shall not be affected thereby.

§ 1469. Authority to invest in state housing corporations.

The Congress finds that Federal savings and loan associations and national banks should have the authority to assist in financing the organization and operation of any State housing corporation established under the laws of the State in which the corporation will carry on its operation. It is the purpose of this section to provide a means whereby private financial institutions can assist in providing housing, particularly for families of low- or moderate-income, by purchasing stock of and investing in loans to any such State housing corporation situated in the particular State in which the Federal savings and loan association or national bank involved is located.

§ 1470. Federal supervision of insured institutions, State member and nonmember banks; access to information; definitions.

(a)(1) The Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State nonmember insured banks shall by appropriate rule, regulation, order, or otherwise regulate investment in State housing corporations.

(2) A State housing corporation in which financial institutions invest under the authority of this section shall make available to the appropriate Federal supervisory agency referred to in paragraph (1) such information as may be necessary to insure that investments are properly made in accordance with this section.

(b) For the purposes of this section and any Act amended by this section—

(1) The term "insured institution" has the same meaning as in section 1724(a) of this title.

(2) The terms "State member insured banks" and "State nonmember insured banks" have the same meaning as when used in the Federal Deposit Insurance Act.

(3) The term "State housing corporation" means a corporation established by a State for the limited purpose of providing housing and incidental services, particularly for families of low or moderate income.

(4) The term "State" means any State, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Notice of Appeal to the Supreme Court of the United States.

In the United States Court of Appeals for the Ninth Circuit.

Conference of Federal Savings and Loan Associations, et al., Plaintiffs-Appellees, v. Alan L. Stein, Successor in Office to Richard T. Silberman, as Secretary of the Business and Transportation Agency of the State of California, Defendant-Appellant.

Federal Home Loan Bank Board, Cross Claimant-Appellee, v. Alan L. Stein, etc., Cross Defendant-Appellant. No. 78-3201.

Filed Nov. 19, 1979.

NOTICE IS HEREBY GIVEN that Alan L. Stein, Successor in office to Richard T. Silberman, as Secretary of the Business and Transportation Agency of the State of California, the defendant-appellant above named, hereby appeals to the Supreme Court of the United States from the Judgment in this action entered on September 26, 1979.

This appeal is taken pursuant to Title 28 U.S.C. § 1254(2).

DATED: November 15, 1979.

Respectfully submitted,

George Deukmejian,
Attorney General
Arthur C. de Goede,
Assistant Attorney General
Joseph M. O'Heron,
Deputy Attorney General
Richard M. Mosk
By Richard M. Mosk
Attorneys for Defendant-Appellant

AFFIDAVIT OF SERVICE BY MAIL.

State of California, City and County of Los Angeles—ss:

Helen Andranian, being first duly sworn on oath, deposes and states:

I am over 18 years of age, and not a party to the within cause; my business address is 1800 Century Park East, Los Angeles, California 90067; I served a copy of the attached NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES on each of the following, by placing same in an envelope(s) addressed as follows:

G. Howden Fraser, Esq.
McKenna & Fitting
3435 Wilshire Boulevard
28th Floor
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Jack Greenberg, Esq.
Beth J. Lief, Esq.
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Educational Fund, Inc.
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Solicitor General
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Harvey Simon, Attorney
Federal Home Loan Bank Board
17th & G Streets, N.W.
Washington, D.C. 20552

Clerk
United States District Court
Eastern District
United States Courthouse
650 Capitol Mall
Sacramento, CA 95814

Each said envelope was then, on November 15, 1979, sealed and deposited in the United States Mail at Los Angeles, California, the county in which I am employed, with the postage thereon fully prepaid.

/s/ Helen Andranian
Affiant

Subscribed and sworn to before me this 15th day of November, 1979.

/s/ Susan K. Anderson
Notary Public in and for said
County and State
[Seal]